

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
for the East Altamont Energy)	01-AFC-4
Center)	
_____)	

TRACY ELKS LODGE # 2031
6400 11TH STREET
TRACY, CALIFORNIA

TUESDAY, OCTOBER 15, 2002
10:15 a.m.

Reported by:
Valorie Phillips
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

William Keese, Presiding Member

Robert Pernell, Associate Member

HEARING OFFICER AND ADVISORS PRESENT

Major Williams, Jr., Hearing Officer

Scott Tomashefsky, Advisor

Al Garcia, Advisor

STAFF AND CONSULTANTS PRESENT

Lisa DeCarlo, Staff Counsel

Cheri Davis, Project Manager

Steve Baker

Eileen Allen

Alvin J. Greenberg, President
Risk Science Associates

Jim Buntin
Brown & Buntin

Negar Vahidi
Aspen Environmental Group

PUBLIC ADVISER

Roberta Mendonca

APPLICANT

Greggory L. Wheatland, Attorney
Ellison, Schneider and Harris

Alicia Torre, Manager, Project Development
Jim McLucas, Regional Engineer
Steven A. DeYoung, Environmental Project Manager
Calpine Corporation

APPLICANT

Susan Strachan, Project Manager
Strachan Consulting

Rob Greene, Manager
URS Corporation

INTERVENORS

Robert Sarvey

ALSO PRESENT

Dave Swanson
Western Area Power Administration

Bill McCammon, Chief
Alameda County Fire District

Larry Fragoso, Chief
City of Tracy Fire Department

Susan Sarvey

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P R O C E E D I N G S

10:15 a.m.

PRESIDING MEMBER KEESE: Good morning.

We'll call this evidentiary hearing of the East
Altamont Energy Center to order.

I'm pleased to have Commissioner Pernell
and his Advisor, Mr. Garcia, joining us. And
Scott Tomashefsky, my Advisor, joining me. And
Major will be conducting the hearings today.

I'm going to be stepping out at 10:30
for a few minutes to take a conference call I must
take. Commissioner Pernell will continue to be
here. We will continue to move forward.

Why don't we have the parties identify
themselves, starting with the applicant, Mr.
Wheatland.

MR. WHEATLAND: Good morning. My name
is Gregg Wheatland; I'm the attorney for the
applicant.

MS. STRACHAN: I'm Susan Strachan; I'm
one of the Environmental Project Managers for the
project.

MR. DeYOUNG: Steve DeYoung, the other
Environmental Manager.

MS. TORRE: My name is Alicia Torre; I'm

1 the Project Development Manager for the East
2 Altamont Energy Center.

3 MR. McLUCAS: My name is Jim McLucas;
4 I'm the Project Engineer for the project.

5 PRESIDING MEMBER KEESE: Okay. Staff.

6 MS. DeCARLO: Lisa DeCarlo here; Staff
7 Counsel. Along with Cheri Davis, Project Manager.

8 PRESIDING MEMBER KEESE: Thank you.

9 MR. SARVEY: Bob Sarvey, Intervenor.

10 PRESIDING MEMBER KEESE: Mr. Sarvey. Do
11 we have anybody from Western?

12 MR. SWANSON: Yeah, Dave Swanson.

13 PRESIDING MEMBER KEESE: Mr. Swanson,
14 Western Area Power Administration.

15 San Joaquin Valley Unified Air Pollution
16 Control District?

17 CURE?

18 And CARE?

19 No one from those entities is present at
20 this time.

21 Bay Area District?

22 Byron Bethany Irrigation District? I
23 believe they'll be here tomorrow.

24 Department of Water Resources?

25 Ms. Mendonca, do we have anybody else

1 that you're aware of participating?

2 MS. MENDONCA: Not this morning, not so
3 far.

4 PRESIDING MEMBER KEESE: And by phone?

5 MS. MENDONCA: No.

6 PRESIDING MEMBER KEESE: No. Thank you.

7 If there are any other interested citizenry here
8 Ms. Mendonca is here to assist. I don't believe
9 there are.

10 Major, why don't you get us where we
11 want to be.

12 HEARING OFFICER WILLIAMS: Thank you,
13 Chairman Keese.

14 Mr. Sarvey, Mr. Boyd has some pending
15 motions, CARE, that he filed last week. And Ms.
16 Mendonca indicated that you may be representing
17 CARE on those matters, is that correct?

18 MR. SARVEY: Yes.

19 HEARING OFFICER WILLIAMS: Okay. As
20 Chairman Keese indicated, Byron Bethany is not
21 present today. They indicated to me that they had
22 a schedule conflict. And, of course, Water
23 Resources is on our schedule to begin at 10:00
24 tomorrow morning.

25 So I think we'll put off CARE's motion.

1 And I believe you have a matter, too, that relates
2 to Byron Bethany's participation as an agency. So
3 we'll put those matters off until tomorrow.

4 MR. SARVEY: Will we still be holding
5 water resources then tomorrow? Or will we be
6 postponing?

7 HEARING OFFICER WILLIAMS: Well, that's
8 a good question. I think you have a motion
9 pending to delay Water Resources. Do you want to
10 state what your motion is at this time?

11 MR. SARVEY: Well, the first thing I
12 want to say is that I do have a witness in water
13 resources, as well, that is not listed on the
14 schedule here. It's Eric Parfrey. And I filed
15 testimony for him on October 1st.

16 But I think the initial issue, and it
17 concerns the hearing conference that we had on the
18 4th, and particularly the intervenors are
19 concerned that a lot of testimony has been filed
20 since that date. And our understanding was that
21 only the intervenors were given the extra time to
22 file by reading the evidentiary -- or reading the
23 record from the prehearing conference I didn't see
24 anybody else included in the extension to file any
25 additional information.

1 So we'd like to get a little
2 clarification on that point. And I think that
3 would be the first and most important thing
4 because there's been a lot of filings. I
5 understand even the applicant has filed
6 information I have not received. And that's just
7 a rumor I've heard; I don't know if the
8 applicant's filed anything since the 1st, because
9 I haven't received anything from them.

10 But I did receive, from the staff, and
11 this is Mr. Boyd's contention, that there's
12 surprise information in here which neither of us
13 have an objection to, but we would like more time
14 to review it. We think staff's testimony is very
15 important and we'd like to see it included, but we
16 feel a little bit off-balance here.

17 There's a cumulative report mentioned
18 here with no detail that we have not received,
19 just a couple of numbers. So we would like to
20 receive the full cumulative report before we can
21 proceed into air quality.

22 And also there's several other issues.

23 And particularly in water with BBID's
24 testimony, Mr. Boyd hasn't received it and his
25 biological witness has a lot of water issues in

1 his testimony. So we may need to revise the
2 biological testimony.

3 So that's where we're at on that.

4 HEARING OFFICER WILLIAMS: Okay, let's
5 do them one at a time, then. The first one is air
6 quality, which we have scheduled for Monday,
7 October 21st. You have indicated that you need
8 certain documentation?

9 MR. SARVEY: Well, there's references in
10 the staff's report that there was a cumulative
11 impact study done. But we don't have a copy of
12 that cumulative impact study. We do have a couple
13 figures for it. We feel it's very important
14 information, but we feel that the document,
15 itself, hasn't been submitted to the intervenors.
16 And we would like more time to take a look at it.
17 It's on page 3 of the staff report errata dated
18 October 10th.

19 And like I said, we firmly believe that
20 it's proper testimony. We would like to see it
21 included, but we do need some time to review it.
22 And we would like to have the cumulative impact
23 analysis, itself, rather than just a summary of
24 it.

25 HEARING OFFICER WILLIAMS: Staff, was

1 that document served on the intervenors?

2 MS. DeCARLO: We did serve the document
3 entitled, errata to the final staff assessment, on
4 the intervenors, which contained a supplement to
5 staff's air quality analysis.

6 During an air quality workshop we held a
7 couple days ago, I believe last weekend -- Monday?
8 last Monday, we had some questions from the public
9 regarding the Tesla air quality analysis, and why
10 that was not included in staff's analysis.

11 And so staff went back and took a look
12 at the air quality cumulative analysis provided by
13 the applicant in the Tesla case and, I believe,
14 supplemented their testimony with that.

15 HEARING OFFICER WILLIAMS: Okay. Have
16 Mr. Sarvey and CARE been provided with that?

17 MS. DeCARLO: Not unless they are also
18 intervenors in the Tesla case I would imagine.
19 We'd be happy to provide whatever we relied on. I
20 think also this supplement also refers to staff's
21 analysis that we conducted and included in the
22 FSA.

23 HEARING OFFICER WILLIAMS: Okay.

24 MS. DeCARLO: It's a little of both.

25 HEARING OFFICER WILLIAMS: Okay.

1 MS. DeCARLO: But we'd be happy to
2 provide it.

3 HEARING OFFICER WILLIAMS: Okay. Now,
4 as to water resources, what precisely is it that
5 you need in that area?

6 MR. SARVEY: Well, our biologist under
7 water resources has made several estimates of the
8 air impacts. And they're included in the
9 testimony. And now we have learned that these
10 impacts are under-estimated, and staff has
11 provided us with some numbers that we need to work
12 with to revise our testimony. And that's part of
13 our problem with water resources.

14 The other problem is something that you
15 had indicated you'd like to talk about tomorrow,
16 but we don't feel Byron Bethany Irrigation
17 District has --

18 HEARING OFFICER WILLIAMS: Right.

19 MR. SARVEY: -- formally intervened on
20 this project, and we don't feel their testimony is
21 appropriate.

22 HEARING OFFICER WILLIAMS: So in essence
23 then you're asking that water and bio be put over?

24 MR. SARVEY: Yes.

25 HEARING OFFICER WILLIAMS: Okay.

1 Applicant, do you have any comment on that?

2 MR. WHEATLAND: Well, I'm not clear, to
3 begin with, what portion of the biology testimony
4 that Mr. Sarvey is sponsoring would be affected by
5 the alleged lack of information on water
6 resources, Perhaps he could be more specific.

7 MR. SARVEY: If you looked at the
8 testimony there's estimates as to the spatial area
9 that will be affected by the contaminants emitted
10 from the facility. And we were working on figures
11 of 7 mcg per cubic meter as the maximum
12 contamination. And now we've been presented with
13 information that could go as high as 19 to 22
14 mcg/cubic meter, and 4 to 8 mcg/cubic meter. So
15 that changes our estimates of the impacts to
16 biological resources from the toxic air
17 contaminants, and the not only toxic air
18 contaminants, but the criteria pollutants, as
19 well.

20 MR. WHEATLAND: And what was the
21 information that you have alleged received that
22 would impact that analysis?

23 MR. SARVEY: Well, I think it's beyond
24 alleged. It's right here, Mr. Wheatland.

25 MR. WHEATLAND: What is it? In the

1 staff's second errata?

2 MR. SARVEY: Yes, sir.

3 MR. WHEATLAND: Is that what you're -- I
4 can't see that far, that's why I'm --

5 MR. SARVEY: I'm sorry, staff's status
6 report on workshops and errata to the final staff
7 assessment.

8 MR. WHEATLAND: Well, as the Committee
9 knows, the applicant bears the burden of proof
10 with respect to the issues of biological impacts.
11 We have made a full and complete showing.

12 The staff did an independent analysis of
13 that in the FSA and there may be some corrections
14 to the staff's testimony, but they are solely in
15 the nature of an errata. They are not substantive
16 revisions. And we don't think that these errata
17 that the staff has put forward would warrant a
18 delay in the scheduled hearings on the issue of
19 biology.

20 MR. SARVEY: So you're comfortable with
21 this new information?

22 MR. WHEATLAND: I'm comfortable in
23 believing that any of that information can be
24 discussed at the time scheduled for the biology
25 testimony by the respective witnesses.

1 HEARING OFFICER WILLIAMS: Mr. Sarvey,
2 is your witness available tomorrow?

3 MR. SARVEY: Yes, he'll be here.

4 HEARING OFFICER WILLIAMS: Okay. Then
5 we will proceed as the schedule indicates, and
6 again, we'll take up the matter tomorrow. And
7 certainly if there's a problem with the figures
8 and your witness indicates that there is a need
9 for more time, the Committee will consider that
10 tomorrow.

11 MR. SARVEY: Has the applicant filed any
12 testimony since the 1st? We have not received
13 any, and we're interested in knowing what he's
14 proposing or what he's put out there since. We
15 have no copies of anything from the applicant.

16 HEARING OFFICER WILLIAMS: You don't
17 have the applicant's testimony?

18 MR. SARVEY: Anything that's been
19 presented since -- I have everything from October
20 1st; if they have docketed anything after that I
21 have not received it.

22 And it was my understanding that only
23 the intervenors were allowed the grace period
24 there, but maybe we misunderstood the --

25 HEARING OFFICER WILLIAMS: Yeah. I have

1 a tentative exhibit list that is being copied. As
2 I understand it, the applicant has filed certain
3 errata to its testimony in the area of air and
4 visual resources. And at least one other area, is
5 that right, Mr. Wheatland?

6 MR. WHEATLAND: That's right, we have
7 provided errata in the area of air and visual
8 resources, as well as the declaration of Mr.
9 Rubenstein.

10 And all of these items that we filed
11 were discussed either at the prehearing conference
12 before the Committee where we indicated we would
13 be making these filings, or in the workshops at
14 which Mr. Sarvey was present.

15 HEARING OFFICER WILLIAMS: Okay. So, --
16 and noise was the other area, also. You filed an
17 errata in the area of noise.

18 MR. WHEATLAND: That's correct.

19 HEARING OFFICER WILLIAMS: Do you have
20 copies of those materials to provide to Mr.
21 Sarvey?

22 MR. WHEATLAND: Yes, we can provide them
23 with a copy.

24 HEARING OFFICER WILLIAMS: So, Mr.
25 Sarvey, applicant has not provided any additional

1 new matters in the area of water. So, you're on
2 firm ground if you go the filings on October
3 1st --

4 MR. SARVEY: Okay.

5 HEARING OFFICER WILLIAMS: -- with
6 regard to the water materials.

7 Okay, the record should reflect that the
8 applicant has provided Mr. Sarvey a copy of the
9 errata in the area of noise, visual resources and
10 also air.

11 I would also ask that Mr. Sarvey, and
12 you can convey this to Mr. Boyd, as well, that it
13 would be very helpful to the Committee if you
14 could provide an email electronic version of your
15 prehearing conference statement.

16 And that way it will be much easier for
17 the Committee to incorporate the exhibits from
18 your prefiled conference statements into our
19 overall exhibit list which is being copied.

20 As you'll see when we get that back, the
21 exhibit list is broken down by party. And we will
22 incorporate the exhibits that way, as they come
23 in. It's not complete, but at least it'll give
24 you some idea of how we will be taking the
25 exhibits. So, as soon as that comes back we'll

1 get it out to the parties.

2 Okay, staff has filed an objection to
3 the introduction of legal opinion as testimony,
4 and has suggested an alternative approach.

5 COMMISSIONER PERNELL: Excuse me, Mr.
6 Williams, before we go to the next topic, just for
7 the record I want to be sure that all of the
8 information and filings, everyone has them.

9 So, Mr. Sarvey, let me start with you.
10 Do you have all of the information that you think
11 that you haven't received a copy of? You
12 indicated since the 1st, so are you comfortable
13 that you have all the information you need to go
14 forward?

15 Because what I don't want to do is have,
16 in the middle of the hearing, somebody say, well,
17 I didn't get that document.

18 MR. SARVEY: Well, I think I have all
19 the information, but I just received three
20 documents here that I --

21 COMMISSIONER PERNELL: Right, --

22 MR. SARVEY: -- wasn't aware of, so I
23 can't tell you that I have everything. I think I
24 have everything from the staff because staff has
25 made a concerted effort to give me all their

1 information, has emailed it to me. So I'm pretty
2 sure I have everything from the staff. The
3 applicant, I'm not quite so sure.

4 COMMISSIONER PERNELL: All right, let me
5 ask the applicant, have you presented, with those
6 documents this morning, all of the information
7 that you have filed so far, to Mr. Sarvey?

8 MR. WHEATLAND: Yes, we have.

9 COMMISSIONER PERNELL: And then let me
10 ask staff basically the same question. What I'm
11 trying to do is get this, all of the documents and
12 the information, making sure that all of the
13 parties have them before we proceed.

14 So my question to staff is do Mr. Sarvey
15 have all of the information that you have, along
16 with the applicant, from your side?

17 MS. DeCARLO: Yes, we sent him the
18 electronic copies of our errata, and also
19 overnighted him hard copies for his use.

20 COMMISSIONER PERNELL: All right, and,
21 Mr. Sarvey, will you take responsibility in
22 insuring that Mr. Boyd gets those documents that
23 you have?

24 MR. SARVEY: That's a lot of
25 responsibility there, Mr. Pernell. But --

1 COMMISSIONER PERNELL: Well, I'm just
2 asking --

3 MR. SARVEY: -- he indicates that he
4 hasn't received several documents in his filing,
5 and I can't speak for him on that. He says that
6 he hasn't received Byron Bethany Irrigation
7 District's testimony, and several other items.
8 And I can't tell you whether he's received that
9 information.

10 COMMISSIONER PERNELL: Okay, I'm --

11 MR. SARVEY: I haven't spoke with him
12 today, so.

13 COMMISSIONER PERNELL: But my
14 understanding he does have access to email and the
15 internet, and perhaps the applicant can insure
16 that he gets those documents.

17 MR. WHEATLAND: Yes.

18 MR. SARVEY: I think what he's missing
19 is BBID's testimony, and he says he still hasn't
20 received the FSA, which I don't know.

21 COMMISSIONER PERNELL: That's an unfair
22 question to you, I --

23 MR. SARVEY: I prefer not --

24 COMMISSIONER PERNELL: -- I apologize,
25 but --

1 MR. SARVEY: -- to take responsibility
2 for Mr. Boyd.

3 COMMISSIONER PERNELL: What I do want on
4 the record, though, is that the parties will
5 insure that all of the intervenors, staff, and
6 applicant get the necessary documents they need,
7 so that this case can go forward without
8 interruption.

9 So even if, from the applicant's
10 standpoint, I would suggest that if you have Mr.
11 Boyd's email that he gets the documents that
12 you've given Mr. Sarvey this morning.

13 MR. WHEATLAND: We would be pleased to
14 provide it to him in whichever manner he feels is
15 most expeditious.

16 COMMISSIONER PERNELL: Okay.

17 HEARING OFFICER WILLIAMS: It might be a
18 good idea during one of the breaks to contact
19 Byron Bethany and have them email a copy of their
20 prehearing conference statement to Mr. Boyd, as
21 well.

22 MR. WHEATLAND: We will do so.

23 HEARING OFFICER WILLIAMS: Thank you.

24 COMMISSIONER PERNELL: Thank you, Mr.
25 Williams.

1 HEARING OFFICER WILLIAMS: Now, Mr.
2 Sarvey, did you get a copy of staff's objection to
3 the introduction of legal opinion?

4 MR. SARVEY: Yes, I did.

5 HEARING OFFICER WILLIAMS: Okay. Again,
6 I think in the interest of efficiency it's another
7 matter that we're going to have to take up
8 tomorrow and that involves Byron Bethany. And
9 they will be here tomorrow, so we'll revisit the
10 motions tomorrow.

11 Evidentiary hearings are formal in
12 nature, similar to court proceedings. The purpose
13 of the hearings is to receive evidence, including
14 the testimony, and to establish the factual record
15 necessary to reach a decision in this case.

16 Applicant has the burden of presenting
17 sufficient substantial evidence to support the
18 findings and conclusions required for
19 certification of the proposed facility.

20 Topics and testimony. We will hear
21 testimony as set forth in the Committee's topic
22 schedule that I passed out earlier. Do the
23 parties all have a copy of this? Roberta, would
24 you like a copy of it?

25 (Pause.)

1 HEARING OFFICER WILLIAMS: We are
2 beginning with the uncontested topics. However,
3 at 1:00 p.m., following the lunch break, we will
4 move to the contested topics. We'll deal with
5 worker safety and fire protection at 1:00 to
6 accommodate the testimony from the Alameda County
7 Fire Chief.

8 Staff, were you able to confirm that he
9 will be present here at 1:00?

10 MS. DeCARLO: Yes, he will. And staff
11 will be sponsoring his testimony.

12 HEARING OFFICER WILLIAMS: Okay, great.
13 So, after we proceed through the uncontested
14 topics, in addition to the contested topic of
15 worker safety and fire protection, our next
16 contested topic will be land use.

17 But apparently, staff, your witness is
18 available today only?

19 MS. DeCARLO: Correct. We're sponsoring
20 both staff witnesses, Eileen Allen and Negar
21 Vahidi, and Agency Director Adolph Martinelli from
22 the Alameda County Community Development Agency.
23 And between the three, there are various
24 scheduling conflicts, and so today after 2:00 p.m.
25 is the best time that all three can be present.

1 HEARING OFFICER WILLIAMS: And Mr.
2 Martinelli is also available on the 21st, if we
3 need to?

4 MS. DeCARLO: Yes, I believe the
5 applicant had coordinated with him the potential
6 of him showing --

7 MS. TORRE: My understanding was that
8 Adolph Martinelli preferred to be giving his
9 testimony on the 21st when the intervenors'
10 witnesses were also present.

11 HEARING OFFICER WILLIAMS: That was my
12 understanding.

13 MR. SARVEY: Could you say that again,
14 Alicia?

15 MS. TORRE: It was just my understanding
16 that Adolph Martinelli preferred to give his
17 testimony on the 21st since your witnesses --

18 MR. SARVEY: That was my understanding,
19 as well.

20 MS. TORRE: -- Mr. Parfrey and -- also
21 available that day, that it would be more
22 appropriate.

23 COMMISSIONER PERNELL: Let me just say,
24 could you state your name for the record? We
25 are -- when you make a statement, because this is

1 being recorded and we're trying to compile a good
2 evidentiary record.

3 MS. TORRE: I apologize. My name is
4 Alicia Torre.

5 COMMISSIONER PERNELL: Thank you.

6 HEARING OFFICER WILLIAMS: Staff, are
7 your witnesses available on the 21st, as well?

8 MS. DeCARLO: No. Unfortunately one of
9 our consultants, Negar Vahidi, will be on vacation
10 that week.

11 HEARING OFFICER WILLIAMS: Okay. Well,
12 let us -- we'll just take your -- if it's okay
13 with the parties, my proposal is that we take the
14 applicant's witnesses; and staff, we'll take your
15 witnesses, except for Mr. Martinelli. And then
16 we'll revisit, then, land use on the 21st.

17 MR. SARVEY: Could we have Eileen Allen
18 present then on the 21st, as well, for
19 questioning?

20 HEARING OFFICER WILLIAMS: On the 21st?

21 MS. DeCARLO: I believe she is available
22 on the 21st. I will, however, have to confirm
23 that with her, --

24 HEARING OFFICER WILLIAMS: Okay, --

25 MS. DeCARLO: -- at a break.

1 HEARING OFFICER WILLIAMS: -- would you
2 do that, please?

3 MS. DeCARLO: Sure.

4 MR. SARVEY: Thank you.

5 HEARING OFFICER WILLIAMS: Okay. Then,
6 after land use we'll -- go ahead, applicant.

7 MR. WHEATLAND: It was our understanding
8 that our witnesses would be made available on the
9 21st.

10 HEARING OFFICER WILLIAMS: Okay.

11 MR. WHEATLAND: So we would be able to
12 have them here on that date, but we have not made
13 prior arrangements for them to come today.

14 HEARING OFFICER WILLIAMS: Okay. Well,
15 we'll just take staff out of order, then. Okay.
16 And we'll accommodate staff's conflict that way.
17 And then we'll return to land use on the 21st.

18 So after we take staff's witness,
19 staff's land use witnesses, we'll move on to noise
20 today. And then we'll conclude with noise today.

21 MR. WHEATLAND: If I could, please, just
22 to advise the Committee, as a result of our
23 discussions in the workshop, it's my understanding
24 that the staff and applicant have reached a
25 resolution of the noise issue.

1 HEARING OFFICER WILLIAMS: Okay.

2 MR. WHEATLAND: And so that as between
3 the staff and the applicant, I believe this issue
4 will be uncontested.

5 HEARING OFFICER WILLIAMS: Okay.

6 MR. WHEATLAND: I'd note also that Mr.
7 Sarvey has indicated in one of his prehearing
8 conference statements that he has some concerns or
9 questions about noise. And I wanted to ask if
10 these were concerns regarding the noise testimony
11 in general, or whether they were specific to the
12 impact of noise on biological resources.

13 MR. SARVEY: It was impacts of noise on
14 biological resources. So if you want to bring
15 your noise expert in for that, that would be --
16 when we do biological.

17 MR. WHEATLAND: Well, we have some
18 biologists that will be prepared to speak to that
19 issue, but I believe then we may be able to close
20 the noise issue today as an uncontested issue.

21 HEARING OFFICER WILLIAMS: Okay.

22 MS. DeCARLO: Staff would like the
23 opportunity just to enter some testimony into the
24 record --

25 MR. WHEATLAND: Oh, yes.

1 MS. DeCARLO: -- about the recent
2 developments that weren't included --

3 MR. WHEATLAND: Right.

4 MS. DeCARLO: -- in the final staff
5 assessment.

6 MR. WHEATLAND: Right.

7 HEARING OFFICER WILLIAMS: Okay. Great.
8 So that's how we will proceed today.

9 Now, CARE had indicated that it perhaps
10 wanted to cross-examine some of the witnesses in
11 these topics that are otherwise uncontested.

12 Mr. Sarvey, do you know when CARE,
13 through Mr. Boyd, plans to attend these
14 proceedings?

15 MR. SARVEY: Mr. Boyd is going to be
16 here tomorrow for the entire day. And I would
17 imagine the only one that he would like to comment
18 on would be alternatives. So it would be nice if
19 we could put that topic off. Other than that, I
20 don't see any reason -- I don't think he's got any
21 substantial issues with these other items.

22 HEARING OFFICER WILLIAMS: Okay.
23 Applicant?

24 MR. WHEATLAND: Previously Mr. Boyd had
25 stated that only biology was his concern, and that

1 he was only going to be here for that subject
2 area. If Mr. Sarvey is suggesting adding a second
3 topic, we have no objection to that, but we do
4 believe that these other issues that are listed
5 here should be able to proceed to being entered
6 into the record today.

7 HEARING OFFICER WILLIAMS: Okay, then
8 we'll proceed that way then based upon Mr.
9 Sarvey's representation that Mr. Boyd will be here
10 tomorrow, and is interested in alternatives.
11 Could you make your witness available tomorrow --

12 MR. WHEATLAND: Yes.

13 HEARING OFFICER WILLIAMS: -- in the
14 area of alternatives? Staff?

15 MS. DeCARLO: Yes. And tomorrow is the
16 only day that our alternative witness will be
17 available, so that works out fine.

18 HEARING OFFICER WILLIAMS: Okay, great.
19 Okay, with that, I think we'll proceed --

20 MS. DeCARLO: Clarification. At what
21 point in the hearings will alternatives be
22 discussed tomorrow? Will it be at the end of all
23 the previously identified topic areas?

24 HEARING OFFICER WILLIAMS: Yeah, we'll
25 put it at the end.

1 COMMISSIONER PERNELL: Mr. Williams.

2 HEARING OFFICER WILLIAMS: Yes.

3 COMMISSIONER PERNELL: Let me just make
4 a statement and then you can kick me if I'm wrong
5 about this. But, intervenors have a special
6 status. And if an intervenor -- if we have topics
7 that an intervenor is concerned about then they
8 should be here, or have a representative here.
9 And I'm simply saying that because of the special
10 status of the intervenors.

11 The full Commission voted to allow Mr.
12 Boyd intervenor status, and I think it's up to Mr.
13 Boyd to either have a representative here, or to
14 be here when these topics that he's concerned
15 about, or any other intervenor or applicant or
16 staff is concerned about, it is their
17 responsibility to be at these hearings, or have a
18 surrogate.

19 So I'm saying that now, and I hope
20 that -- I'm assuming that Mr. Boyd will get a
21 transcript -- so I'm saying that now, if he's an
22 intervenor with special intervenor status, then he
23 needs to be here, because I'm not inclined to put
24 over any of these topics because the intervenor is
25 not here or not represented. That's just a

1 general statement.

2 HEARING OFFICER WILLIAMS: Thank you,
3 Commissioner Pernell. Several of the parties
4 throughout -- well, at the onset of these
5 proceedings, have indicated conflicts with the
6 schedule. And certainly we try to accommodate
7 them.

8 In Mr. Boyd's case he, to his credit,
9 did assign Mr. Sarvey as his representative here
10 today We will accept that representation from Mr.
11 Sarvey. And thus far in the proceedings I believe
12 Mr. Sarvey has fully informed the Committee as to
13 what Mr. Boyd's interest in the topics are.

14 So, I think that all the parties should
15 fully understand the need for their presence here.
16 But I think that based upon Mr. Sarvey's
17 representative that we can fully accommodate his
18 absence today.

19 COMMISSIONER PERNELL: Today. However,
20 let me note that Mr. Sarvey has stated that he
21 can't speak for Mr. Boyd on what he's received or
22 not received, or whether he wants to address
23 alternatives or biological resources.

24 So, you know, all due respect to Mr.
25 Sarvey, I'm simply making the statement that if

1 you're an intervenor you have special intervenor
2 status. And certainly Mr. Boyd knows what that
3 is. And this Committee expects to hold him to
4 that.

5 HEARING OFFICER WILLIAMS: Yes. And to
6 the extent that Mr. Boyd is not present when he
7 should be, he carries the risk that he will waive
8 any objection by his lack of presence here. So, I
9 would note that for the record, as well.

10 I have received copies of the tentative
11 exhibit list, and I'll just distribute these right
12 now to allow the parties to look at this. Again,
13 it's incomplete, and it's solely distributed at
14 this time for the parties, to give the parties
15 some idea of where their exhibits will -- how they
16 will be numbered and where they will fit in.

17 And I would reiterate that it would be
18 very helpful if the parties can send me electronic
19 versions of the prehearing conference statements
20 which has their draft exhibit list, as well.

21 Okay, to continue. Witnesses will
22 testify under oath or affirmation. During the
23 hearings a party sponsoring a witness shall
24 establish the witness' qualifications, to the
25 extent that the matter is not stipulated to, and

1 ask the witness to summarize the prepared
2 testimony.

3 Relevant exhibits should be offered into
4 evidence at that time. At the conclusion of a
5 witness' direct testimony the sponsoring party
6 should move in all relevant exhibits to be
7 received into evidence.

8 the Committee will next provide the
9 parties an opportunity for cross-examination,
10 followed by redirect and recross-examination, as
11 appropriate.

12 Multiple witnesses may testify as a
13 panel. The Committee may also question the
14 witnesses. Upon the conclusion of each topic area
15 we will invite members of the public to offer
16 unsworn public comment. Public comment is not
17 testimony and a Committee finding cannot be based
18 solely on such comments. However, public comment
19 may be used to explain evidence in the record.

20 The order of presentations on testimony
21 throughout the day will be as follows: Applicant,
22 which has the burden of proof; staff and Western;
23 and then Mr. Sarvey.

24 Exhibits should be marked in accordance
25 with the tentative exhibit list. Again, I'm

1 requesting for the third time that all parties
2 email to the Committee, through me, electronic
3 copies of their prehearing conference statements
4 so that the Committee may have it available in
5 formulating a final exhibit list.

6 If duplicate exhibits are noted by the
7 parties, please let me know so that we do not have
8 redundant exhibits in the record. If the exhibits
9 are materially different with markings or that
10 sort of thing, then, of course, you may keep it
11 in.

12 Okay. So, having reviewed the tentative
13 exhibit list, are there any questions about it at
14 this time?

15 MS. DeCARLO: Couple questions. Staff
16 notes that the PSA is listed as an exhibit.
17 However, generally we don't enter the preliminary
18 staff assessment into the record. It's generally
19 usually the final staff assessment, since it is
20 our final documentation of our analysis.

21 HEARING OFFICER WILLIAMS: Yeah, that's
22 a typo. That should be the final staff
23 assessment.

24 MS. DeCARLO: And one other item. Staff
25 notes that on page 7, exhibit 2WW appears to be

1 the same letter as exhibit 1F on page 1.

2 HEARING OFFICER WILLIAMS: Okay, then,
3 staff, you're sponsoring the witness -- are you
4 sponsoring the witness? Mr. Martinelli?

5 MS. DeCARLO: I believe so, yes.

6 HEARING OFFICER WILLIAMS: Okay, so
7 we'll delete 2WW from applicant's category.

8 MR. SARVEY: Mr. Williams?

9 HEARING OFFICER WILLIAMS: Yes.

10 MR. SARVEY: Bob Sarvey. I've got a
11 couple exhibits that I'm going to be submitting
12 today under fire protection, if those will be
13 acceptable. I have copies for everyone.

14 HEARING OFFICER WILLIAMS: Okay.

15 MR. SARVEY: Since they're not on the
16 exhibit list I'll be allowed to enter them into
17 the record?

18 HEARING OFFICER WILLIAMS: Okay. Do you
19 want to pass those out now?

20 MR. SARVEY: Sure.

21 HEARING OFFICER WILLIAMS: Let's get
22 them marked now.

23 MS. DeCARLO: Staff also has one more
24 item we'd like to enter into the exhibit list.
25 It's an email from Chris Helm to Paul Richins

1 regarding recycled water. And we have some copies
2 to distribute, as well.

3 HEARING OFFICER WILLIAMS: Okay, we'll
4 take up yours after Mr. Sarvey. Do you have
5 copies, Mr. Sarvey?

6 MR. SARVEY: Yes.

7 (Pause.)

8 HEARING OFFICER WILLIAMS: Mr. Sarvey,
9 is Mr. -- is it Estes?

10 MR. SARVEY: Chief Estes, yes.

11 HEARING OFFICER WILLIAMS: Chief Estes,
12 is he going to testify today?

13 MR. SARVEY: He is not in the country.

14 HEARING OFFICER WILLIAMS: Okay.

15 MR. SARVEY: So I presented his
16 testimony, which Mr. Wheatland pointed out, was
17 not actually testimony, but a declaratory
18 statement, at the conference. So I'm providing
19 that, as well.

20 I had docketed it as direct testimony,
21 but he is not available.

22 HEARING OFFICER WILLIAMS: Are there any
23 objections to -- I have a June 10, 2002 letter
24 from Chief Estes to the Alameda County Fire
25 Department; a September 30, 2002 letter from Chief

1 Estes to the California Energy Commission; and a
2 statement from --

3 COMMISSIONER PERNELL: Mr. Sarvey, do
4 you have another set available?

5 MR. SARVEY: Yes.

6 COMMISSIONER PERNELL: Copies?

7 MR. SARVEY: Yes.

8 COMMISSIONER PERNELL: Thank you.

9 HEARING OFFICER WILLIAMS: Mr. Sarvey,
10 the document that has the caption, East Altamont
11 Energy Center, Robert Sarvey, Intervenor, exhibit
12 number 12 on the top, is that your signature at
13 the bottom there?

14 MR. SARVEY: Yes, it is.

15 HEARING OFFICER WILLIAMS: And it's
16 dated 6/05/02?

17 MR. SARVEY: Yes, I docketed it on that
18 date.

19 HEARING OFFICER WILLIAMS: Applicant, do
20 you have any objection to this document?

21 MR. WHEATLAND: Yes, I do. First of
22 all, it's not clear whether Mr. Sarvey is
23 intending to sponsor this as a witness and take
24 the stand and testify to the matters contained
25 therein.

1 MR. SARVEY: It's just an exhibit.

2 MR. WHEATLAND: Well, for an exhibit of
3 this nature we believe it would require a witness
4 to sponsor it, to be available to answer questions
5 about it, to establish that the matters set forth
6 in here are, in fact, true and correct.

7 We have no objection to the two letters
8 because these letters from the City of Tracy Fire
9 Department are clearly correspondence from an
10 interested agency. We have no objection to their
11 introduction as exhibits to the record.

12 But this third document, which seems to
13 be a collection of argument and newspaper
14 articles, we would object to without a sponsoring
15 witness. Even if Mr. Sarvey were to offer himself
16 as a witness I would point out that this was
17 submitted -- well, the date, I'm not sure of the
18 date of this, but it certainly wasn't submitted as
19 testimony by the October 1st deadline that the
20 Committee had set.

21 So those would be our objections to this
22 document.

23 HEARING OFFICER WILLIAMS: Okay, we'll
24 take the two letters, the June 10th letter and the
25 September 30th letter from Chief Estes as 6A 1 and

1 2.

2 MR. SARVEY: I had intended for Chief
3 Estes to testify to this information. Can I bring
4 it in under cross-examination?

5 HEARING OFFICER WILLIAMS: One second,
6 Mr. Sarvey.

7 MR. SARVEY: Okay.

8 (Pause.)

9 HEARING OFFICER WILLIAMS: We'll mark
10 the June 5, 2002 testimony as 6B for
11 identification.

12 MS. DeCARLO: Is that the June 10th?

13 HEARING OFFICER WILLIAMS: Yes.

14 MR. WHEATLAND: No, I think the June
15 10th letter was --

16 HEARING OFFICER WILLIAMS: No, it's June
17 5th, I'm sorry. June 5th. The one with the
18 caption on it that's signed by Mr. Sarvey.

19 MS. DeCARLO: Okay.

20 HEARING OFFICER WILLIAMS: The one that
21 you objected to?

22 MR. WHEATLAND: Yes.

23 HEARING OFFICER WILLIAMS: We'll mark
24 that as 6B for identification.

25 COMMISSIONER PERNELL: What is the

1 title? I have it -- I have it.

2 HEARING OFFICER WILLIAMS: It's
3 entitled, East Altamont Energy Center, Robert
4 Sarvey, Intervenor, exhibit 12, docket number
5 25837.

6 MS. DeCARLO: And if I can get some
7 clarification as to what the June 10th one is? Is
8 that 6A-1 or 6A-2?

9 HEARING OFFICER WILLIAMS: June 10th is
10 6A-1. September 30th is 6A-2.

11 MS. DeCARLO: Thank you.

12 HEARING OFFICER WILLIAMS: Mr. Sarvey, I
13 think applicant's objection to your testimony is
14 well taken. It might -- the best way to handle
15 this may be to allow for Mr. Boyd to sponsor your
16 testimony on this document if that's satisfactory
17 to you. And we could, of course, do that
18 tomorrow.

19 MR. SARVEY: Okay.

20 HEARING OFFICER WILLIAMS: Okay?

21 MR. SARVEY: All right.

22 HEARING OFFICER WILLIAMS: So that's how
23 the Committee would plan to proceed with 6B for
24 identification.

25 MR. SARVEY: Okay.

1 HEARING OFFICER WILLIAMS: Is that
2 satisfactory to you, applicant?

3 MR. WHEATLAND: Yes, it is, thank you.

4 HEARING OFFICER WILLIAMS: Staff?

5 MS. DeCARLO: Yes, that's satisfactory
6 to staff.

7 HEARING OFFICER WILLIAMS: Okay, great.
8 Now, staff, you have a document, next in order is
9 1G. Do you have copies of it?

10 MS. DeCARLO: Yes, I have a few copies.
11 I apologize that I didn't bring a sufficient
12 number, but I have one for --

13 (Pause.)

14 HEARING OFFICER WILLIAMS: Okay, great,
15 thanks. Now, we'll mark 1G for identification.
16 Staff, you said this was an email?

17 MS. DeCARLO: Yes.

18 HEARING OFFICER WILLIAMS: Yes. From
19 Chris Helm to Paul Richins, dated July 19, 02.
20 It's two pages long, and at the very end of the
21 document it shows a cc to Cheri Davis at the
22 Energy Commission and someone at Calpine, Keena at
23 Calpine.

24 MS. DeCARLO: And, I'm sorry, what were
25 we going to mark the exhibit?

1 HEARING OFFICER WILLIAMS: 1G, next in
2 order.

3 MS. DeCARLO: Thank you.

4 HEARING OFFICER WILLIAMS: I think
5 that's next in order.

6 MR. WHEATLAND: May I inquire at this
7 time as to the purpose of this exhibit? I don't
8 have any objection at this time, but I note that
9 this exhibit has been in the possession of the
10 staff since 7/19/02. It wasn't included in the
11 FSA, in the staff's first errata or its second
12 errata. So I would inquire as to the purpose of
13 this exhibit being identified at this time.

14 MS. DeCARLO: Mainly to be used as
15 cross-examination purposes; perhaps used in direct
16 testimony as an indication of the applicant's
17 position at that time with regard to recycled
18 water availability.

19 MR. WHEATLAND: Well, we would object to
20 its use as supplemental direct testimony by the
21 staff because the deadline for filing supplemental
22 direct testimony has passed. We would have no
23 objection to this document being used in the
24 cross-examination of the author. And the staff
25 could move it into evidence following cross-

1 examination if that was appropriate.

2 MS. DeCARLO: It wouldn't necessarily be
3 supplemental direct testimony. It would be more
4 in the lines of rebuttal testimony.

5 HEARING OFFICER WILLIAMS: Okay, the
6 Committee obviously hasn't had a chance to review
7 the document. It deals with water, so this is
8 something I think we ought to take up tomorrow.

9 MR. WHEATLAND: Okay.

10 HEARING OFFICER WILLIAMS: Okay? We'll
11 revisit it again tomorrow.

12 MR. WHEATLAND: And if I just may ask,
13 at the appropriate time in today's proceeding Ms.
14 DeCarlo has mentioned rebuttal testimony, and
15 that's the first time there's been any mention of
16 rebuttal testimony, so we would like to have a
17 discussion at the appropriate time with the
18 Committee regarding any additional or rebuttal
19 testimony that may be filed in this proceeding.

20 HEARING OFFICER WILLIAMS: Okay. Who
21 did you say had mentioned rebuttal testimony?

22 MR. WHEATLAND: Ms. DeCarlo just had
23 mentioned it as possible rebuttal. And we haven't
24 been informed prior to this instant of the staff's
25 intent or desire to file any rebuttal testimony.

1 HEARING OFFICER WILLIAMS: Okay. Staff,
2 is there any other rebuttal testimony that you
3 have?

4 MS. DeCARLO: Staff will be responding
5 to various assertions made in the applicant's
6 comment during their direct testimony. However,
7 considering the short timespan from receipt of
8 applicant's testimony, the rush to attempt to
9 resolve certain issues in the workshops, staff has
10 not had time to provide written rebuttal
11 testimony.

12 However, the rebuttal testimony directly
13 relates to the testimony provided in the final
14 staff assessment. It's just an attempt to clarify
15 issues that the applicant has brought up that are
16 in contention.

17 HEARING OFFICER WILLIAMS: I think for
18 the record that the Committee is going to be
19 inclined to give a wide latitude to rebuttal
20 testimony in light of the late conferences and
21 what-have-you that were held to sort some of these
22 issues out.

23 So, you know, --

24 MR. WHEATLAND: Recognizing that I'd
25 like to just state for the record that the

1 Committee previously ordered us to file our direct
2 testimony on October 1st so that the staff would
3 have an opportunity to review it.

4 And at the time of the prehearing
5 conference advise us and other parties if they
6 wanted to proceed with rebuttal testimony or
7 additional supplemental testimony.

8 The entire purpose of filing our
9 testimony in advance of the PHC was to facilitate
10 that dialogue so that we could plan an orderly
11 proceeding.

12 And so if the staff is now proposing
13 now, for the very first time, not having mentioned
14 anything in the prehearing conference regarding
15 rebuttal testimony, we think that's inappropriate.
16 And we think that they should have identified at
17 the time of the prehearing conference their intent
18 or desire to provide rebuttal. And that they
19 should have provided it to us before the
20 commencement of the evidentiary hearings.

21 MS. DeCARLO: Staff has devoted the bulk
22 of its time attempting to resolve all resolvable
23 issues, as indicated by the numerous errata that
24 we've submitted to resolve most of the issues.

25 Unfortunately, this has precluded us

1 from actually submitting written testimony
2 rebutting those assertions made by the applicant.
3 The applicant was allowed the opportunity to
4 respond to staff's final testimony, and staff
5 merely requests the opportunity to respond to
6 applicant's.

7 HEARING OFFICER WILLIAMS: Again, the
8 Committee will give the parties some latitude in
9 regards to rebuttal testimony based upon the fact
10 that workshops were held and there really has been
11 a short timeframe in terms of planning for the
12 workshops and reviewing testimony and that sort of
13 thing.

14 Obviously if based upon the Committee's
15 receipt of certain materials either party feels
16 that more time is needed, I believe the Committee
17 will be inclined to grant the parties time, as
18 opposed to restricting --

19 MR. WHEATLAND: Right.

20 HEARING OFFICER WILLIAMS: -- the
21 receipt of the evidence.

22 MR. WHEATLAND: I agree with your ruling
23 regarding wide latitude, but I must point out that
24 the agreement we had was that the workshops would
25 be conducted, and then the staff would, last

1 Thursday, file an errata that would respond to the
2 issues in the workshop, indicate their positions
3 on those issues and where we stood.

4 And when they filed that last Thursday
5 they didn't indicate the need for additional
6 rebuttal. They filed an errata based upon the
7 responses in the workshop. And we have not had
8 timely notice of any further rebuttal. We assumed
9 that when you ordered them last Thursday as the
10 cut-off date to file, make that filing, that that
11 was, in fact, their position. And this is a
12 change in their position from last Thursday.

13 HEARING OFFICER WILLIAMS: I understand,
14 Mr. Wheatland. But, again, I believe the
15 Committee will give wide latitude in the area of
16 rebuttal testimony.

17 MR. WHEATLAND: Thank you.

18 HEARING OFFICER WILLIAMS: Okay, now I
19 think we'll begin with the stipulated testimony
20 according to the Committee's topic schedule.

21 And the first topic is project
22 description. Mr. Wheatland, what do you have
23 there?

24 MR. WHEATLAND: The applicant has filed
25 testimony on the subject of project description.

1 That testimony is set forth in the exhibit which
2 has been identified as exhibit 3A. That testimony
3 was sponsored by Alicia Torre. And it includes
4 the relevant portions of the application and
5 certain supplements to that application.

6 And we believe that this issue is
7 uncontested. And we would propose to stipulate to
8 the admission of this testimony into the record in
9 support of project description.

10 HEARING OFFICER WILLIAMS: Okay. Staff,
11 what do you have in terms of project description?

12 MS. DeCARLO: We generally do not
13 sponsor testimony for project description. Our
14 project description topic area in the final staff
15 assessment is merely a reiteration of the
16 applicant's proposed project in order to
17 facilitate the reader's review of our final staff
18 assessment.

19 HEARING OFFICER WILLIAMS: Okay. Then
20 do staff and applicant accept the project
21 description testimony identified as applicant
22 exhibit 3A on the exhibit list, and the
23 corresponding testimony of staff in the FSA as
24 true and correct on this topic?

25 MR. WHEATLAND: We do.

1 HEARING OFFICER WILLIAMS: Staff?

2 MS. DeCARLO: Yes, we do.

3 HEARING OFFICER WILLIAMS: Do you
4 understand that by accepting the testimony as true
5 and correct you also waive the right to cross-
6 examination of any witness on this topic?

7 MR. WHEATLAND: We do.

8 HEARING OFFICER WILLIAMS: Staff?

9 MS. DeCARLO: Yes, we do.

10 HEARING OFFICER WILLIAMS: Do you
11 stipulate to the witnesses' qualifications?

12 MS. DeCARLO: We stipulate to the
13 applicant's qualifications.

14 MR. WHEATLAND: We do.

15 HEARING OFFICER WILLIAMS: Mr. Sarvey?

16 MR. SARVEY: No objections.

17 HEARING OFFICER WILLIAMS: And you're
18 also speaking for CARE, as well?

19 MR. SARVEY: Yes.

20 HEARING OFFICER WILLIAMS: Thank you.
21 So that portion of the FSA dealing with project
22 description and applicant's exhibit 3A is
23 admitted.

24 Compliance and closure. Mr. Wheatland.

25 MR. WHEATLAND: Yes. The subject of

1 general conditions including compliance monitoring
2 and closure is set forth in chapter 5-1 of our
3 direct testimony, which is identified as exhibit
4 3C.

5 And I believe there is no dispute as
6 between the staff and applicant with respect to
7 compliance and monitoring and closure, except
8 there may be one minor outstanding issue, is that
9 right, Ms. DeCarlo?

10 MS. DeCARLO: Yes. We would request to
11 leave the record open for an elaboration of the
12 requirements of COM-9. It's just a clarification
13 as to exactly what staff is requesting. But for
14 that minor opening in the record, we agree to
15 stipulate to the entering and admittance into the
16 record.

17 HEARING OFFICER WILLIAMS: Okay. Mr.
18 Sarvey?

19 MR. SARVEY: I have no objections.
20 Perhaps CARE might, since they're not here to
21 represent themselves, I can't speak for their
22 objections, but I have none.

23 HEARING OFFICER WILLIAMS: Thank you.

24 MR. SARVEY: I think CARE indicated that
25 they had some issues with compliance. How the

1 Committee deals with that is at their discretion,
2 of course.

3 HEARING OFFICER WILLIAMS: Just for the
4 record, as we go through each topic I won't ask
5 each question every time, but the parties should
6 understand that by stipulating to each other's
7 testimony that they accept the testimony as true
8 and correct. That they waive their right to
9 cross-examination, and they stipulate to the
10 witnesses' qualifications. Great.

11 Okay, we'll admit applicant's exhibit 3C
12 and the corresponding section compliance and
13 closure in the FSA. And we'll leave the record
14 open on the sole issue identified by staff.

15 We'll move on now to the facility
16 design, power plant reliability and power plant
17 efficiency.

18 MR. WHEATLAND: Yes, these three topics
19 are covered together in chapter 3.1-1 of the
20 applicant's direct testimony. And these are
21 identified as exhibits 3D for facility design,
22 power plant reliability and power plant
23 efficiency.

24 And we believe that all issues are
25 resolved and uncontested as between the applicant

1 and the staff.

2 HEARING OFFICER WILLIAMS: Staff?

3 MS. DeCARLO: Yes, we agree. Did you
4 want us to set forth our --

5 HEARING OFFICER WILLIAMS: Yes, please.

6 MS. DeCARLO: Okay.

7 HEARING OFFICER WILLIAMS: Why don't we
8 do that for the record.

9 MS. DeCARLO: Yes. In the area of
10 facility design we submit testimony of Brian
11 Payne, his declaration and qualifications are
12 included in the final staff assessment and the
13 errata.

14 Would you like me to go on to the other
15 issues that apply?

16 HEARING OFFICER WILLIAMS: Yeah,
17 facility design, power plant reliability and power
18 plant efficiency.

19 MS. DeCARLO: We submit testimony in the
20 area of power plant efficiency, testimony of
21 Shahab Khosmashrab and Steve Baker. And their
22 qualifications and declarations are included in
23 the FSA and the various errata.

24 And both are also the witnesses for
25 power plant reliability. They are sponsoring it

1 through their declarations also included in the
2 final staff assessment and errata.

3 HEARING OFFICER WILLIAMS: Thank you,
4 staff. Mr. Sarvey?

5 MR. SARVEY: I have no comments. CARE
6 has indicated they want to make some comments, but
7 once again, that's the Committee's call on that.

8 HEARING OFFICER WILLIAMS: Okay, thank
9 you. Then applicant's exhibit 3D and the
10 corresponding sections of the FSA, facility
11 design, power plant reliability and power plant
12 efficiency are admitted.

13 We've gone through some of the
14 preliminary matters. Is there anybody here from
15 the public that has any comment at this point?
16 Seeing none, we'll continue.

17 Transmission system engineering.

18 MR. WHEATLAND: Yes. The applicant's
19 testimony on transmission system engineering is
20 set forth in chapter 3.4-1 of the applicant's
21 direct testimony. And this has been identified as
22 exhibit 3E. And we believe that this area has
23 been resolved and there are no uncontested issues
24 as between the staff and applicant on transmission
25 system engineering.

1 HEARING OFFICER WILLIAMS: Staff?

2 MS. DeCARLO: Yes, we agree, and we
3 submit testimony in the area of transmission
4 system engineering from Ajay Guha and Al McCuen.
5 The testimony begins on page 6.1-5 in the final
6 staff assessment, and their qualifications and
7 declarations are included in the final staff
8 assessment and errata.

9 HEARING OFFICER WILLIAMS: Thank you.
10 Mr. Sarvey.

11 MR. SARVEY: I have no issues.

12 HEARING OFFICER WILLIAMS: Thank you.
13 Then applicant's exhibit 3E and the corresponding
14 section or sections of the FSA regarding
15 transmission system engineering are admitted.

16 MS. DeCARLO: Point of clarification.
17 I'm sorry. I think I messed up the page number.
18 It's actually 6.5-1 --

19 HEARING OFFICER WILLIAMS: Okay.

20 MS. DeCARLO: -- for transmission system
21 engineering.

22 HEARING OFFICER WILLIAMS: Okay. Well,
23 again, we won't worry about page numbers at this
24 point. We know it's there. We'll just have to
25 find it.

1 Transmission line safety and nuisance.

2 MR. WHEATLAND: Yes, this testimony is
3 set forth in chapter 2.11-1 of the applicant's
4 direct testimony. It's been identified as exhibit
5 3F. This is another issue in which there are no
6 contested issues between the applicant and the
7 staff.

8 HEARING OFFICER WILLIAMS: Staff.

9 MS. DeCARLO: Yes, we agree, and we
10 submit, in the area of transmission line safety
11 and nuisance, the testimony of Obed Odomelam,
12 whose qualifications and declaration are included
13 in the final staff assessment. And the testimony
14 is located on page 5.10-1.

15 HEARING OFFICER WILLIAMS: Thank you.
16 Mr. Sarvey.

17 MR. SARVEY: No comments.

18 HEARING OFFICER WILLIAMS: Then we'll
19 admit exhibit 3F and the corresponding section or
20 sections of the final staff assessment on the
21 topic of transmission line safety and nuisance.

22 Cultural resources.

23 MR. WHEATLAND: Cultural resources is
24 another area which we believe is uncontested. And
25 that testimony is set forth in chapter 2.3-1 of

1 the applicant's direct testimony which has been
2 identified as exhibit 3G.

3 HEARING OFFICER WILLIAMS: Staff.

4 MS. DeCARLO: Yes, we agree that the
5 matter's uncontested between staff and applicant.
6 We submit the testimony of Roger Mason in the area
7 of cultural resources. His qualifications and
8 declaration are included in the final staff
9 assessment. And the testimony begins on page 5.3-
10 1 of the final staff assessment.

11 HEARING OFFICER WILLIAMS: Thank you.

12 Mr. Sarvey.

13 MR. SARVEY: Yeah, we'd like to question
14 the applicant's witness on cultural resources.

15 HEARING OFFICER WILLIAMS: All right.

16 Applicant.

17 MR. WHEATLAND: On cultural resources I
18 would note that there is a staff errata on this
19 subject, cultural resources. And is it correct
20 for me to presume that as we admit the staff's
21 testimony in that area, we're also incorporating
22 their errata?

23 HEARING OFFICER WILLIAMS: That's

24 correct.

25 MR. WHEATLAND: Okay, that's great

1 because the agreement on this area is reflected in
2 the testimony together with the errata.

3 Okay, so I just wanted to get that
4 clarification.

5 We can make our witness available on
6 cultural resources. To my knowledge this was not
7 an area that Mr. Sarvey had previously identified
8 as being one which he had contested. The
9 Committee had previously directed all parties to
10 advise the Committee by last Thursday if they had
11 any issues or questions in this area. And for
12 that reason we didn't bring the witness here
13 today.

14 HEARING OFFICER WILLIAMS: Okay. Now,
15 on the first question as to the errata on cultural
16 resources, is that contained in exhibit 1A on the
17 exhibit list? The errata filed on October 1st?

18 MR. WHEATLAND: This would be their
19 second errata, and I'm not sure which -- if that
20 has been identified yet.

21 MS. DeCARLO: Yes, I believe it's
22 identified as exhibit 1E, final staff assessment
23 errata, October 9, 2002.

24 MR. WHEATLAND: Okay.

25 HEARING OFFICER WILLIAMS: Okay. So,

1 the cultural resources errata is contained within
2 exhibit 1E.

3 MS. DeCARLO: Yes, it is.

4 HEARING OFFICER WILLIAMS: And,
5 applicant, thank you for that clarification. The
6 Committee would note that both staff errata
7 identified as exhibit 1A and 1E are admitted into
8 evidence to the extent that material deals with
9 the topics that we admit today.

10 Mr. Sarvey, did you get a copy of that,
11 the exhibit 1E and 1A, the staff errata?

12 MR. SARVEY: Yes, I believe I did.

13 HEARING OFFICER WILLIAMS: Okay. Now,
14 Mr. Sarvey, as to the second matter, the cross-
15 examination on cultural resources, apparently this
16 was not a topic that was included in your
17 prehearing conference statements?

18 MR. SARVEY: From my understanding Mr.
19 Boyd included it in his, and he has questions
20 concerning the applicant's cultural resources
21 conditions of certification.

22 HEARING OFFICER WILLIAMS: Is that
23 correct, applicant?

24 MR. WHEATLAND: I'd have to check Mr.
25 Boyd's voluminous filing to determine whether

1 that's correct or not. But when Mr. Boyd was on
2 the line during our prehearing conference, the
3 Committee specifically directed all of the
4 intervenors to notify the Committee and other
5 parties if they wished to have witnesses made
6 available for cross-examination. The Committee
7 directed that that notice be provided by last
8 Thursday. And we haven't received any such notice
9 from Mr. Boyd with respect to cultural resources.

10 We're checking now to look at his
11 filings to see whether that issue was flagged.

12 HEARING OFFICER WILLIAMS: So, Mr.
13 Sarvey, am I to understand that the issue is Mr.
14 Boyd's, not your own?

15 MR. SARVEY: It's Mr. Boyd's, correct.

16 HEARING OFFICER WILLIAMS: Thank you.
17 Again, if the matter was not identified as a -- or
18 reserved by Mr. Boyd as a matter that needed a
19 witness in the prehearing conference statements,
20 Commissioner Pernell has already spoken for the
21 Committee in terms of its position that those
22 matters will not be put over to accommodate the
23 intervenor when there was no reservation made in
24 terms of the prehearing conference statements.

25 So, we'll note the objection for the

1 record, but unless Mr. Boyd identified cultural
2 resources as an area, that a specific request was
3 made to cross-examine witnesses, then we'll
4 consider that matter waived.

5 MR. SARVEY: So he would have had to
6 have included that in the prehearing conference
7 statement?

8 HEARING OFFICER WILLIAMS: Yes.

9 MR. SARVEY: Thanks, Mr. Williams.

10 HEARING OFFICER WILLIAMS: Okay, we'll
11 move now to geology.

12 MR. WHEATLAND: Okay, geology is set
13 forth in chapter 3.3-1 of the applicant's direct
14 testimony. It's been identified as exhibit 3H.
15 And there are no contested issues between the
16 staff and applicant or other parties that we're
17 aware of.

18 HEARING OFFICER WILLIAMS: Staff.

19 MS. DeCARLO: That is correct. Staff's
20 testimony in both geology and paleontology is
21 submitted by declaration of Dr. Dal Hunter. We
22 also have a point of minor clarification in the
23 submittal if you would like us to address that
24 now?

25 HEARING OFFICER WILLIAMS: Which one is

1 it?

2 MS. DeCARLO: For paleontology.

3 HEARING OFFICER WILLIAMS: Okay.

4 MR. WHEATLAND: Oh, we're in geology
5 right now.

6 MS. DeCARLO: Right, and our testimony
7 encompasses both.

8 MR. WHEATLAND: Okay, right.

9 HEARING OFFICER WILLIAMS: So, yeah, why
10 don't you go ahead.

11 MS. DeCARLO: Okay, it's actually the
12 testimony is in the final staff assessment, and in
13 the second errata marked 1E. And I can read into
14 the record our change to that errata.

15 HEARING OFFICER WILLIAMS: Let me think
16 here -- staff, I think, because we're going to
17 have a voluminous record, it might be easier for
18 everybody if you could just reduce that to writing
19 at some point?

20 MS. DeCARLO: Sure.

21 HEARING OFFICER WILLIAMS: And we'll
22 stick it in as a separate staff exhibit.

23 MS. DeCARLO: Yes, we'll do that.

24 HEARING OFFICER WILLIAMS: Can you do
25 that? Okay, thanks.

1 Mr. Sarvey.

2 MR. SARVEY: We have no issues.

3 HEARING OFFICER WILLIAMS: Okay. Then
4 we will admit applicant's exhibit 3I and the
5 corresponding sections of the errata and the FSA.

6 MR. WHEATLAND: 3H?

7 HEARING OFFICER WILLIAMS: 3H, and the
8 corresponding errata and FSA section or sections
9 on geology.

10 And, of course, staff's testimony will
11 also include paleontology, because those sections
12 are combined in the FSA. And staff will be
13 submitting an errata, another errata on the
14 paleontology testimony.

15 Staff, your --

16 MR. WHEATLAND: All right, yeah.

17 HEARING OFFICER WILLIAMS: --
18 paleontology?

19 MR. WHEATLAND: Yes, our paleontology --
20 I got through that word -- just barely -- our
21 testimony is set forth in chapter 3.2-1 that's
22 been identified as exhibit 3I. And with the minor
23 clarification that Ms. DeCarlo mentioned, we're in
24 full agreement with staff on the subject area, and
25 we believe there are no contested issues.

1 HEARING OFFICER WILLIAMS: Thank you.

2 Mr. Sarvey.

3 MR. SARVEY: No contested issues.

4 HEARING OFFICER WILLIAMS: Okay. Then
5 staff's (sic) exhibit 3I is admitted.

6 Soil and resources.

7 MR. WHEATLAND: Soil and resources is
8 set forth in chapter 2.9-1 of our direct
9 testimony; that's been identified as exhibit 3J.
10 And we believe there are no contested issues
11 between the parties on this topic.

12 HEARING OFFICER WILLIAMS: Staff.

13 MS. DeCARLO: Yes, we agree there's no
14 contested issues in soil resources. Since our
15 soil resources testimony is interlinked with
16 water, water resources, I will just delay entering
17 that into the record until our water resources
18 testimony if that's acceptable.

19 HEARING OFFICER WILLIAMS: Well, we can
20 go ahead and admit the -- even though it's
21 combined we'll go ahead and admit the soil
22 resources portion of the FSA and the errata. And
23 note that the soil resources is part of the topic
24 of soil and water resources in the FSA.

25 Mr. Sarvey.

1 MR. SARVEY: I have no issues.

2 HEARING OFFICER WILLIAMS: Okay. So,
3 applicant's exhibit 3J is admitted, as well as the
4 corresponding soil sections of the FSA and errata.

5 Waste management.

6 MR. WHEATLAND: Waste management. Our
7 testimony is set forth in chapter 2.14-1 and
8 following pages of our direct testimony. And this
9 has been identified as exhibit 3K.

10 HEARING OFFICER WILLIAMS: Staff.

11 MR. WHEATLAND: And I should say there
12 are no contested issues.

13 MS. DeCARLO: Yes, staff agrees there
14 are no contested issues in the area of waste
15 management. Our testimony is entered by
16 declaration of Obed Odomelam. His qualifications
17 and declaration are also included in the final
18 staff assessment.

19 HEARING OFFICER WILLIAMS: Okay. Mr.
20 Sarvey.

21 MR. SARVEY: Nothing further.

22 HEARING OFFICER WILLIAMS: Okay, then
23 we'll admit applicant's exhibit 3K and the
24 corresponding sections of the FSA and errata on
25 waste management.

1 Traffic and transportation.

2 MR. WHEATLAND: Traffic and
3 transportation is set forth in chapter 2.10 of our
4 direct testimony; this has been identified as
5 exhibit 3L. There are no contested issues between
6 the staff and applicant as to the conditions of
7 certification. We are in full agreement with
8 those conditions of certification.

9 I would like just to note for the record
10 that the applicant doesn't necessarily agree with
11 the staff's methodology that addresses the issues
12 of plume impacts. But since the conditions will
13 satisfactorily resolve the impacts that the staff
14 has identified, and because these conditions are
15 also satisfactory to the applicant, there's no
16 need to contest that methodology in this
17 proceeding.

18 And so as to the conditions of
19 certification we are in full agreement, and we
20 would classify this as an uncontested area.

21 HEARING OFFICER WILLIAMS: Thank you.
22 Staff.

23 MS. DeCARLO: Yes, we would agree that
24 this is an uncontested area. Staff is submitting
25 the testimony of David Flores in the area of

1 traffic and transportation. His testimony is
2 included in the final staff assessment, as well as
3 item 1E, staff errata. His declaration and
4 qualifications are also included in the final
5 staff assessment.

6 And we would also like to enter into
7 evidence the ground level fogging analysis
8 testimony performed by Will Walters and Lisa
9 Bluett. Their qualifications and declarations are
10 also included in the final staff assessment and
11 errata.

12 HEARING OFFICER WILLIAMS: Is that part
13 of the traffic and transportation section?

14 MS. DeCARLO: Yes, it's appendix A of
15 the traffic and transportation. It's separate
16 from the plume analysis.

17 HEARING OFFICER WILLIAMS: Okay.

18 MS. DeCARLO: In visual.

19 HEARING OFFICER WILLIAMS: Okay. Mr.
20 Sarvey.

21 MR. SARVEY: No issues there.

22 HEARING OFFICER WILLIAMS: Okay, then
23 we'll admit exhibit 3L and the corresponding
24 sections identified by staff of the FSA dealing
25 with traffic and transportation, as well as the

1 errata previously identified.

2 Socioeconomics.

3 MR. WHEATLAND: Socioeconomics is set
4 forth in chapter 2.9 of our direct testimony.
5 This has been identified as exhibit 3M and there
6 are no contested issues as between the staff and
7 the applicant.

8 HEARING OFFICER WILLIAMS: Staff.

9 MS. DeCARLO: Yes, there are no
10 contested issues in the area of socioeconomics.
11 James Adams is sponsoring the testimony. His
12 declaration and qualifications are contained in
13 the final staff assessment. His testimony is
14 included in the final staff assessment, as well as
15 in the errata marked 1E.

16 HEARING OFFICER WILLIAMS: Thank you.

17 Mr. Sarvey.

18 MR. SARVEY: Yeah, I only have one issue
19 but it's probably tied into another topic. I
20 requested in my prehearing conference to talk
21 about the issue of public benefit. And I believe
22 socioeconomics ties in on that issue, but I don't
23 see anything on the schedule related to the public
24 benefit and the override that the staff is asking.

25 HEARING OFFICER WILLIAMS: Right, that

1 was part of your motion, as well, right?

2 MR. SARVEY: Right.

3 HEARING OFFICER WILLIAMS: That we're
4 going to take up tomorrow.

5 MR. SARVEY: So, I mean I do have an
6 issue with socioeconomics in that respect, but I'm
7 not sure that I have an issue in any other area
8 connected to socioeconomics.

9 HEARING OFFICER WILLIAMS: Okay.
10 Well, --

11 MS. DeCARLO: If I can provide some
12 clarification. Staff's testimony in the area of
13 the CEQA override issue is contained in the
14 executive summary, socioeconomics is not related
15 to that. We have a witness for that area if the
16 Committee deems that it would like to hear about
17 that. Paul Richins will be sponsoring that
18 testimony if necessary.

19 HEARING OFFICER WILLIAMS: Okay. Yeah,
20 we'll put that over till tomorrow and figure out
21 how to deal with it at that time, including in
22 hearing Mr. Sarvey's motion tomorrow.

23 So then the Committee will admit exhibit
24 3M and the corresponding socioeconomics testimony
25 contained in the FSA and the errata.

1 Okay, I think since we are going to be
2 proceeding with worker safety and fire protection
3 at 1:00, this might be an appropriate time to take
4 a lunch break, unless there are any objections.

5 (Laughter.)

6 MS. DeCARLO: No objections here.

7 HEARING OFFICER WILLIAMS: Okay, we'll
8 break for lunch.

9 (Whereupon, at 11:45 a.m., the hearing
10 was adjourned, to reconvene at 1:00
11 p.m., this same day.)

12 --o0o--

1 AFTERNOON SESSION

2 1:00 p.m.

3 HEARING OFFICER WILLIAMS: A couple of
4 housekeeping matters before we get into testimony.
5 I would note that, staff, your exhibit 1C, the
6 recycled water feasibility study?

7 MS. DeCARLO: Yes.

8 HEARING OFFICER WILLIAMS: I think
9 that's part of applicant's exhibits 2MMM and I
10 think it's also part of Byron Bethany's
11 submissions, as well.

12 MS. DeCARLO: Okay, we don't need to
13 sponsor it, we just wanted to make sure that that
14 was entered into the record.

15 HEARING OFFICER WILLIAMS: Okay, so
16 we'll go ahead and delete 1C, and we'll renumber
17 the exhibits --

18 MS. DeCARLO: I also found another
19 duplication on exhibit 2WWW on page 8.

20 HEARING OFFICER WILLIAMS: Oh, yeah. So
21 do you want to -- are you satisfied to have that
22 come in as part of applicant's?

23 MS. DeCARLO: Yeah, that's fine as long
24 as we can refer to it.

25 HEARING OFFICER WILLIAMS: Yeah, okay.

1 Good. And you have passed out another errata, as
2 well?

3 MS. DeCARLO: Yeah, for noise.

4 HEARING OFFICER WILLIAMS: Noise. Dated
5 today. So do you want to substitute this one, or
6 just add it as the next in order?

7 MS. DeCARLO: Well, we'll need to add
8 it.

9 HEARING OFFICER WILLIAMS: Okay.

10 MS. DeCARLO: We won't be entering into
11 evidence that portion of 1E that encompasses
12 noise.

13 HEARING OFFICER WILLIAMS: Okay.

14 MS. DeCARLO: This will replace that,
15 but --

16 HEARING OFFICER WILLIAMS: Okay.

17 MS. DeCARLO: -- it'll need to be a
18 separate document.

19 HEARING OFFICER WILLIAMS: Okay, so
20 we'll add the additional errata to the final staff
21 assessment, environmental assessment, dated
22 October 15th as the next in order in staff's
23 exhibits.

24 And, again, we'll be deleting staff
25 exhibit 1C and 1D because they're duplicates.

1 I'll be passing out a revised tentative exhibit
2 list tomorrow so we can follow along with that.

3 MS. DeCARLO: So the noise errata of
4 today will be 1H?

5 HEARING OFFICER WILLIAMS: Whatever's
6 next in order --

7 MS. DeCARLO: Okay.

8 HEARING OFFICER WILLIAMS: -- right now.
9 I won't know until I do the math.

10 MS. DeCARLO: You'll clarify that
11 tomorrow. Perfect, thank you.

12 HEARING OFFICER WILLIAMS: Okay. Also,
13 the Committee had requested that I inquire of
14 applicant as to whether or not applicant has any
15 objections to what staff raised in its rebuttal --
16 excuse me, it's objection to taking legal
17 argument. And it's preference that that material
18 be submitted in briefs. And I believe it relates
19 to Byron Bethany's calling of the attorney.

20 MR. WHEATLAND: Well, if I understand
21 the nature of staff's motion it actually is an
22 objection to two pieces of testimony, one being
23 the testimony of Byron Bethany's testimony from a
24 legal witness?

25 HEARING OFFICER WILLIAMS: Right.

1 MR. WHEATLAND: And the second one, if I
2 understand the motion, and I'm not -- perhaps I've
3 misunderstood it, there's also an objection to Mr.
4 Kevin O'Brien sponsoring the testimony of the
5 applicant on water resources?

6 MS. DeCARLO: Yes, that is correct.

7 HEARING OFFICER WILLIAMS: Yes.

8 MR. WHEATLAND: Well, as to Byron
9 Bethany, I'd prefer we address that one tomorrow.

10 HEARING OFFICER WILLIAMS: Right.

11 MR. WHEATLAND: I can address as to the
12 applicant's testimony, if you'd like, I can do
13 that.

14 HEARING OFFICER WILLIAMS: Sure, could
15 you just summarize the applicant's position on
16 that?

17 MR. WHEATLAND: Well, the starting place
18 is I'm not sure exactly what the staff is
19 objecting to. Perhaps I can just ask this as a
20 threshold. Is the objection to specific language
21 in our testimony on water. Or is it to the fact
22 that Mr. O'Brien is a witness?

23 Because if it's the former, the staff
24 hasn't actually identified the language to which
25 they object. So I must presume that it's just the

1 fact that Mr. O'Brien is a witness, is that
2 correct?

3 MS. DeCARLO: Yes, it's having an
4 attorney serve as a witness in evidentiary
5 hearings.

6 MR. WHEATLAND: Well, to that matter
7 it's been actually a routine practice of this
8 Commission to allow attorneys to testify. For
9 example, in the Morro Bay case the Committee, I
10 think Chairman Keese was on the Committee also,
11 accepted the testimony of an attorney on the issue
12 of land use, that is the conformance of the
13 project to the applicable laws in the land use
14 area. And that testimony was admitted without
15 objection by the staff.

16 We presume then if the question is which
17 are the applicable LORS, which is, after all, the
18 essence of the Commission's determination, that a
19 testimony by an attorney in the water use area
20 would be equally as appropriate as the testimony
21 by an attorney in the land use area.

22 All of the statements to which Mr.
23 O'Brien is testifying are point and counter-point
24 to statements that are included within the staff's
25 testimony. For example, if they say that a

1 particular statute is applicable, or a particular
2 law is applicable, or a particular law provides
3 guidance, or a particular law shows a consistency
4 with a staff recommendation, we may have a
5 different interpretation as to those issues to
6 which the staff is testifying in its FSA.

7 And it was our determination that of
8 those people that are best able to testify to this
9 matter, it was Mr. O'Brien, who happens to be an
10 attorney.

11 So my response is really twofold. First
12 of all, it's very appropriate for witnesses to
13 testify as to the applicability of a law, a
14 standard or an ordinance because the staff is
15 doing it in their testimony all the time.

16 And it's equally appropriate for an
17 attorney to testify to those matters because the
18 Commission, as a routine practice in previous
19 proceedings, has accepted the testimony of
20 attorneys on these matters.

21 So we believe it would be appropriate to
22 allow Mr. O'Brien to testify. And we would urge
23 you to accept his testimony in this area.

24 HEARING OFFICER WILLIAMS: Okay. Staff,
25 I would ask that you would hold your argument till

1 tomorrow. We just wanted to get a --

2 MS. DeCARLO: Certainly.

3 HEARING OFFICER WILLIAMS: -- a sense of
4 where the applicant stood as to the scope of the
5 testimony.

6 MR. WHEATLAND: May I just add one other
7 thing, which was the staff had indicated that Ms.
8 Ichien might come to make an opening statement.
9 And I would say that we would have no objection,
10 of course, to her making a statement, or to her
11 testifying. And, indeed, if she were to testify I
12 doubt that we would have any questions for her.

13 So we feel that these are matters that
14 are appropriate for the record, and we would
15 support whatever form the staff felt was
16 appropriate to include this information in the
17 record in support of their case.

18 MS. DeCARLO: And for clarification, Ms.
19 Ichien will probably not be able to come tomorrow
20 due to scheduling conflicts, but I will be giving
21 staff's opening statement if, in fact, that is the
22 way that we go.

23 HEARING OFFICER WILLIAMS: Thank you.
24 Okay, with that, I think we are prepared to
25 proceed --

1 MR. SARVEY: Can I make one comment, Mr.
2 Williams?

3 HEARING OFFICER WILLIAMS: -- with the
4 applicant's presentation on worker safety and fire
5 protection.

6 MR. SARVEY: Can I make one comment, Mr.
7 Williams?

8 HEARING OFFICER WILLIAMS: Sure.

9 MR. SARVEY: I wasn't aware that
10 attorneys were eligible to testify in the
11 hearings. And as such, I would like to present my
12 own attorney in certain matters.

13 So, I mean this is, to me, unheard --
14 you know, I've never heard that attorneys were
15 allowed to testify in this hearing.

16 HEARING OFFICER WILLIAMS: What topic
17 area, Mr. Sarvey?

18 MR. SARVEY: Probably be under worker
19 safety and fire protection and under CEQA issues,
20 as well. So that's my own comment. We can deal
21 with it tomorrow, but I didn't think -- I do have
22 an attorney that I would like to present, but I
23 didn't think that he was eligible. And he,
24 himself, did not think he was eligible to testify,
25 as well. So I just wanted to add that as a

1 comment. Thank you.

2 HEARING OFFICER WILLIAMS: Okay, thank
3 you. All right, with that we'll proceed to
4 applicant's presentation on worker safety and fire
5 protection.

6 MR. WHEATLAND: The applicant's
7 testimony is set forth in chapter 2.16 of the
8 applicant's direct testimony, which I'm trying to
9 find on the corresponding list of exhibits. And
10 which is marked as exhibit 4A.

11 The testimony is really in two parts;
12 worker safety was sponsored by Tricia Danby and
13 fire protection by James McLucas. This is an area
14 which I believe is uncontested as between the
15 applicant and the staff, however we have Mr.
16 McLucas available if there are any questions from
17 any parties in this area.

18 And I also understand that the Alameda
19 County Fire Marshal is available here today also
20 to provide information to the Committee as they
21 may desire.

22 HEARING OFFICER WILLIAMS: Okay. Why
23 don't you have your witness summarize your
24 presentation.

25 MR. WHEATLAND: All right. Jim.

1 Do you want me to go through the
2 standard introduction, the foundation for his --

3 HEARING OFFICER WILLIAMS: Yes, why
4 don't you do that?

5 MR. WHEATLAND: All right. Mr. McLucas,
6 do you have before you a copy of exhibit 4A, which
7 is the worker safety and fire protection
8 testimony?

9 HEARING OFFICER WILLIAMS: Before you
10 get there let's swear your panel. Would it be
11 easier if we had them move over?

12 MR. WHEATLAND: Ms. Danby's not here
13 today because we understand that there's no
14 questions with respect to worker safety issue, so
15 we just have Mr. McLucas.

16 HEARING OFFICER WILLIAMS: Okay, fine.

17 MR. WHEATLAND: Would you prefer to have
18 him at this table?

19 HEARING OFFICER WILLIAMS: Whatever is
20 easier for you.

21 MR. WHEATLAND: I think it's easier for
22 him to stay where he is.

23 HEARING OFFICER WILLIAMS: Okay.
24 Whereupon,

25 JIM McLUCAS

1 was called as a witness herein, and after first
2 having been duly sworn, was examined and testified
3 as follows:

4 BY MR. WHEATLAND:

5 Q So, Mr. McLucas, do you have before you
6 a copy of exhibit 4A?

7 A Yes, I do.

8 Q And was the fire protection portion of
9 this testimony prepared by you or at your
10 direction?

11 A Yes, it was.

12 Q And does the fire protection portion of
13 this testimony also contain your qualifications?

14 A Yes, it does.

15 Q And could you briefly summarize your
16 qualifications?

17 A I'm a mechanical engineer. My role in
18 this project is as the project engineer for the
19 development phase, which pretty much under it
20 comes all engineering responsibilities relative to
21 the design of the plant, including fire protection
22 systems.

23 My background, I've got 21 years of
24 experience in the design of energy facilities,
25 water and wastewater treatment facilities.

1 Q Do you have any additions, corrections
2 or clarifications to your testimony?

3 A No.

4 Q And is the testimony that you're
5 sponsoring and the facts contained therein true to
6 the best of your knowledge?

7 A Yes.

8 Q And do the opinions in this testimony
9 represent your best professional judgment?

10 A Yes.

11 Q And do you adopt exhibit 4A as your
12 testimony?

13 A Yes.

14 Q And in summarizing your testimony is it
15 your testimony that with respect to fire
16 protection this project will comply with all
17 applicable laws, ordinances, and standards?

18 A Yes.

19 Q Thank you.

20 MR. WHEATLAND: Mr. McLucas would be
21 available for cross-examination.

22 HEARING OFFICER WILLIAMS: Staff?

23 MS. DeCARLO: Staff has no cross-
24 examination.

25 HEARING OFFICER WILLIAMS: Mr. Sarvey.

CROSS-EXAMINATION

BY MR. SARVEY:

Q Mr. McLucas, what is your estimated response time for emergency services to the facility?

A From the location of the nearest firehouse that would respond to this, we've indicated that it's 20 minutes.

Q I believe your testimony says ten. Is that a correction to your testimony?

A Ten minutes is relative to the relocation of a new firehouse that would be located near interstate 580 and Greenville Road.

Q Okay, so then you are referring to the station that has not yet been relocated, is that correct?

A Relative to the ten minutes?

Q Ten minutes.

A Yes.

Q Okay. And you're estimating that from the existing firehouse it's 20 minutes, is that correct?

A Yes.

MR. SARVEY: Okay, no further questions.

HEARING OFFICER WILLIAMS: Anything

1 further?

2 MR. WHEATLAND: No, I have no redirect.

3 HEARING OFFICER WILLIAMS: Staff.

4 MS. DeCARLO: Our testimony now?

5 HEARING OFFICER WILLIAMS: Yeah, why
6 don't you proceed.

7 MS. DeCARLO: Okay. The staff witness
8 for the topic of worker safety and fire protection
9 is Alvin Greenberg. Staff will also be sponsoring
10 the testimony of Bill McCammon. And they both
11 need to be sworn in.

12 Whereupon,

13 ALVIN GREENBERG and BILL McCAMMON
14 were called as witnesses herein, and after first
15 having been duly sworn, were examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MS. DeCARLO:

19 Q Mr. Greenberg, can you please state your
20 name for the record?

21 DR. GREENBERG: Alvin Greenberg.

22 MS. DeCARLO: Was a statement of your
23 qualifications attached to this testimony?

24 DR. GREENBERG: Yes.

25 MS. DeCARLO: What is your job title?

1 DR. GREENBERG: I'm the owner of Risk
2 Science Associates; I'm under subcontract to Aspen
3 Environmental Group which has the contract with
4 the California Energy Commission to provide
5 consultative services to the Commission on siting
6 the power plants in California.

7 MS. DeCARLO: Could you briefly state
8 your education and experience as it pertains to
9 fire protection?

10 DR. GREENBERG: Yes. I've been involved
11 in fire protection issues in industrial
12 environments since 1979 when I served as Assistant
13 Deputy Chief with the California Occupational
14 Safety and Health Administration.

15 In fact the section of title 8 that's
16 the California Code of Regulations Title 8
17 requiring fire prevention plans, that section 3221
18 which is referenced in the staff assessment, was a
19 new section that was filed on September 8, 1981,
20 and was developed under my guidance and direction
21 by staff that reported to me.

22 I also had extensive experience in
23 working with local fire departments in CalOSHA
24 regulations and in addressing industrial
25 environments fire protection and safety when I was

1 a member of the CalOSHA Standards Board, having
2 been appointed by Governor Jerry Brown in 1983. I
3 served in that capacity for two years working with
4 the City and County of San Francisco in granting
5 variances and other changes to the regulations
6 concerning fire protection in an industrial
7 environment.

8 I have developed over -- rather, I have
9 prepared over 20 worker safety and fire protection
10 sections for the California Energy Commission
11 since 1993. And I am a member of the National
12 Fire Protection Association.

13 MS. DeCARLO: And did you prepare the
14 testimony entitled worker safety and fire
15 protection in the final staff assessment marked
16 exhibit 1, and the errata marked exhibit 1A and
17 1E?

18 DR. GREENBERG: Yes.

19 MS. DeCARLO: And do the opinions
20 contained in your testimony represent your best
21 professional judgment?

22 DR. GREENBERG: Yes, they do.

23 MS. DeCARLO: What were your findings
24 with regard to the project's potential for impacts
25 of fire protection?

1 DR. GREENBERG: Well, first of all, the
2 likelihood of a fire at a power plant is minimal.
3 There's really not very much to burn. And our
4 experience at the Energy Commission, staff level,
5 is that there are very few reportable fires.

6 The applicant is proposing to build this
7 power plant and equipment with state of the art
8 fire detection, prevention and fire fighting
9 systems that will include both passive, that is
10 automatic activated systems, as well as manually
11 activated systems.

12 This would be -- these fire protection
13 systems will be in place during construction as
14 well as in operations. Some of them will include
15 fixed fire fighting capabilities, such as
16 automatic deluge systems; and others will be
17 portable, such as fire extinguishers.

18 There will be a dedicated fire water
19 supply at the facility that would be consistent
20 with the uniform fire code, as well as NFPA
21 standards.

22 The response time, in my opinion, is
23 more than adequate from all -- the response from
24 offsite fire department is more than adequate.

25 This is a rural location and the

1 response time is actually much quicker than for
2 other rural locations previously certified by the
3 Commission.

4 Furthermore, with the relocation of
5 station 8 from its present location to a new
6 location which would be right at Greenville Road
7 and interstate 580, the response time will
8 decrease.

9 MS. DeCARLO: And have there been any
10 other changes since your testimony was filed in
11 addition to the agreement to move the fire
12 station?

13 DR. GREENBERG: The agreement to move
14 the fire station was reflected in the staff's
15 preliminary staff assessment as well as the final
16 staff assessment. There is now a change where the
17 applicant has agreed with the fire department of
18 jurisdiction, which in this case is the Alameda
19 County Fire Department, to fund the relocation, as
20 well as to fund an enhanced response services,
21 emergency response services, with a fixed amount
22 of money. And that is reflected in staff's errata
23 as an additional condition of certification.

24 MS. DeCARLO: And where will the new
25 fire station be located?

1 DR. GREENBERG: Greenville Road and
2 interstate 580.

3 MS. DeCARLO: And approximately how many
4 miles away from the East Altamont Energy Center is
5 that?

6 DR. GREENBERG: That's approximately
7 eight miles.

8 MS. DeCARLO: And do you have an
9 estimated response time for that?

10 DR. GREENBERG: The staff defer to the
11 fire departments in any jurisdiction in any
12 location as to what the response time will be.
13 The chiefs of the fire departments know their
14 terrain much better than the staff.

15 The Fire Department has estimated
16 between 10 and 20 minutes. I, myself, have made
17 the drive in 15 minutes. And so the response time
18 is approximately 10 to 15 minutes.

19 MS. DeCARLO: In your analysis did you
20 consult with any local fire agencies or other
21 agencies regarding this project?

22 DR. GREENBERG: Yes, we did. Yes, I
23 did.

24 MS. DeCARLO: Does the relocation of the
25 fire station alter the conclusions you reached in

1 the FSA in any way?

2 DR. GREENBERG: No, it does not alter
3 the bottomline. It enhances the response time.
4 It was already an adequate response time. This
5 relocation will only enhance the time.

6 MS. DeCARLO: And is your conclusion of
7 no significant impact dependent upon the
8 participation response of the City of Tracy Fire
9 Department?

10 DR. GREENBERG: No, it is not. I'm
11 certainly aware of the issues involved regarding
12 the City of Tracy Fire Department and their
13 concern, as well as the concern of the Mountain
14 House community, which will in the future have a
15 fire department associated with the Tracy Fire
16 Department.

17 Staff first conducted the analysis
18 without an additional fire department being
19 located there in San Joaquin County. And with or
20 without the mutual aid agreement with Tracy Fire
21 Department, it is my professional opinion that the
22 response time and the ability of Alameda County
23 Fire Department to adequately respond to any type
24 of emergency requiring offsite response to be more
25 than adequate for a power plant.

1 MS. DeCARLO: If the City of Tracy Fire
2 Department did agree to respond to an emergency at
3 East Altamont, would this reduce in any way the
4 fire protection services available in the Mountain
5 House community?

6 DR. GREENBERG: No, it would not. It
7 would not leave the Mountain House community
8 vulnerable. There would be other fire department
9 equipment available for a response in the
10 community. Besides the response time, the
11 difference in the response time between Tracy Fire
12 Department and the Alameda County Fire Department
13 is not so significant that there would be large
14 gaps of time when the Tracy Fire Department
15 equipment would be off their location.

16 MS. DeCARLO: And lastly, did you seek
17 the City of Tracy's opinion on the issue of
18 sufficient fire protection?

19 DR. GREENBERG: Yes, I did. In fact,
20 several times over a period beginning in December
21 of 2001. First of all, there were two telephone
22 conversations between myself and Mr. Paul
23 Sensibaugh of the Mountain House community service
24 district, about the planned Mountain House
25 community and the need for fire protection in that

1 community, and whether or not there would be an
2 impact on that fire protection service of that
3 community should the East Altamont facility be
4 built. The communications were on December 28,
5 2001 and June 10, 2002.

6 Second of all there was telephone
7 conversation with Tracy Fire Department Battalion
8 Chief Larry Fragoso, and Battalion Chief Fragoso
9 participated in a May 28, 2002 workshop in
10 Livermore, which was set specifically to discuss
11 fire protection issues.

12 Finally, there was a response by staff
13 to the City of Tracy Fire Department's letter on
14 June 10, 2002.

15 So there's at least four instances where
16 Tracy Fire Department and/or Mountain House
17 community services district were contacted by
18 staff and asked their opinion and input.

19 MS. DeCARLO: Thank you. Mr. McCammon,
20 can you please state your name for the record.

21 FIRE CHIEF McCAMMON: My name is Bill
22 McCammon.

23 MS. DeCARLO: And what is your job
24 title?

25 FIRE CHIEF McCAMMON: Fire Chief of the

1 Alameda County Fire Department.

2 MS. DeCARLO: Can you please summarize
3 your duties?

4 FIRE CHIEF McCAMMON: I'm responsible
5 for the overall operations of the Alameda County
6 Fire Department. We're a dependent special
7 district, which means I report directly to the
8 board of supervisors in Alameda County.

9 We serve approximately 250,000 people.
10 We cover an area of about 460 square miles. We do
11 that through 18 stations. We also provide service
12 to two incorporated cities through contract, the
13 City of San Leandro and the City of Dublin. And
14 the Lawrence Livermore National Laboratory is
15 another contract where we have an engine company.

16 MS. DeCARLO: Have you had a chance to
17 review the proposed East Altamont Energy Center?

18 FIRE CHIEF McCAMMON: Yes, I have.

19 MS. DeCARLO: And what is your
20 conclusion regarding the ability of the Alameda
21 County Fire Department to serve this facility?

22 FIRE CHIEF McCAMMON: First, Fire
23 Marshal Jim Ferdinand has reviewed the built-in
24 fire protection systems and he believes that it is
25 a safe facility.

1 Then from our ability to serve that
2 facility we feel that we can adequately serve the
3 facility.

4 MS. DeCARLO: Have you seen the letter
5 submitted by the City of Tracy Fire Department to
6 the Energy Commission on September 30, 2002
7 regarding the mutual aid agreement?

8 FIRE CHIEF McCAMMON: Yes, I have.

9 MS. DeCARLO: If the City of Tracy Fire
10 Department were to decline to provide emergency
11 response to the East Altamont Energy Center, as
12 implied in their letter, would you still conclude
13 that the Alameda County could sufficiently provide
14 such response by itself?

15 FIRE CHIEF McCAMMON: Yes, I can. And
16 we've had several examples of that. Most notably,
17 the California Water Project has a pumping station
18 that's up in the foothills, similar proximity to
19 where this plant's going to go. And we had a
20 fairly good fire in one of the pumps that were
21 about four stories under the ground. And 90
22 percent, or even more than 90 percent of the
23 resources that were there to fight that fire came
24 from Alameda County. And we really only had one
25 engine company from Tracy. There was about 30

1 firefighters there.

2 So we believe that we can adequately
3 serve this plant without the mutual aid agreement.

4 MS. DeCARLO: Do you have any further
5 comments you would like to make?

6 FIRE CHIEF McCAMMON: I'm just here
7 available to answer any questions that you have.

8 MS. DeCARLO: Thank you. Both witnesses
9 are available for cross-examination.

10 HEARING OFFICER WILLIAMS: Applicant.

11 MR. WHEATLAND: We have no questions.

12 HEARING OFFICER WILLIAMS: Mr. Sarvey.

13 MR. SARVEY: First, I believe Mr. Boyd
14 has an objection to Dr. Greenberg's testimony.

15 HEARING OFFICER WILLIAMS: Thank you,
16 Mr. Sarvey.

17 MR. SARVEY: I haven't heard that dealt
18 with, so I think we need to deal with that first.

19 HEARING OFFICER WILLIAMS: Okay. Dr.
20 Greenberg, will you be available on the 21st?
21 We're taking air quality and public health on the
22 21st.

23 DR. GREENBERG: Well, I'm certainly
24 available, sir, but those topics are not topics
25 that I'm sponsoring testimony.

1 HEARING OFFICER WILLIAMS: Oh, I
2 understand. But what Mr. Sarvey is referencing is
3 that Mr. Boyd has -- CARE, through Mr. Boyd, has
4 interposed an objection to -- it's contained in
5 actually their prehearing conference statement
6 where Mr. Boyd and CARE seek to raise a conflict
7 issue because of your background.

8 DR. GREENBERG: Mr. Williams, if I may,
9 Mr. Boyd is incorrect. I am no longer the Chair
10 of the Bay Area Air Quality Management District
11 Hearing Board. I'm not on the Hearing Board
12 anymore. My term expired on March 14th of this
13 year, and I have not served since then.

14 HEARING OFFICER WILLIAMS: Okay.
15 Well, --

16 MS. DeCARLO: I would also like to add
17 that Mr. Greenberg's testimony does not go to
18 public health or air quality areas, which there
19 could be a potential conflict if he were still on
20 the Board.

21 HEARING OFFICER WILLIAMS: Right. Okay.
22 Then I think that that probably resolves the
23 issue. We have that testimony in the record, so
24 Mr. Sarvey, you can pass that on to Mr. Boyd, if
25 you will. And it will probably obviate the need

1 for you to be here on the 21st.

2 MR. SARVEY: Thank you.

3 HEARING OFFICER WILLIAMS: Now, back to
4 your cross-examination.

5 MR. SARVEY: Has Mr. McCammon, I
6 believe, has he filed prefiled testimony? Does he
7 have a declaratory available? I haven't seen any
8 prefiled testimony or anything.

9 HEARING OFFICER WILLIAMS: Staff, is
10 there, in your prehearing conference statement --

11 MS. DeCARLO: No, we didn't file any
12 prefiled testimony. The Committee had noted that
13 they would like Mr. McCammon to be available.

14 MR. WHEATLAND: May I just, if I could?

15 HEARING OFFICER WILLIAMS: Sure.

16 MR. WHEATLAND: I think Mr. Sarvey is
17 new to Commission proceedings, so these questions
18 that he's asking are very good. But ever since
19 the Warren Alquist Act was created the Act has
20 provided for the opportunity for interested
21 agencies to come before the Commission in public
22 hearings to present information that's applicable
23 to their jurisdiction.

24 And it's been a common practice of the
25 Commission for 25 years for such agencies to come

1 without the requirement of having prefiled
2 testimony, to be available at the hearings, to
3 testify under oath or in the nature of public
4 comment.

5 And the Commission rules expressly
6 provide that opportunity for any interested agency
7 to do so. So their status is different than
8 intervenors. And there is no requirement that
9 they become a party, and there is no requirement
10 they have prefiled testimony.

11 MR. SARVEY: That's a little
12 inconsistent with your position on the testimony I
13 filed for Chief Estes saying there was no
14 declaratory, no testimony, no anything.

15 MR. WHEATLAND: I have no objection to
16 having him come and testify. If he'd like to take
17 the stand, or if he would simply like to sit in
18 that chair and be available to talk to us, I have
19 no objections.

20 But, as the Committee will understand, I
21 can't cross-examine a letter. I can't ask
22 questions of the letter.

23 MR. SARVEY: Understood. So you have no
24 objections to Larry Fragoso, the Tracy Fire Chief,
25 sitting next to me, testifying?

1 MR. WHEATLAND: I have no objections to
2 any interested agency coming before this
3 Committee.

4 MR. SARVEY: Thank you, Mr. Wheatland.

5 HEARING OFFICER WILLIAMS: So is it your
6 intention to call --

7 MR. SARVEY: No, I'm just trying to
8 understand what Mr. Wheatland's position is. And,
9 if necessary, if Chief Fragoso has something to
10 add I would reserve the right to present his
11 information, if it's okay with all the parties.

12 MR. WHEATLAND: It would be fine with
13 the applicant. We'd welcome his participation.

14 MR. SARVEY: Well, in any event, I can
15 get on with my questioning here.

16 HEARING OFFICER WILLIAMS: Yes.

17 MR. SARVEY: And these questions are for
18 Mr. McCammon. Thanks for coming today.

19 CROSS-EXAMINATION

20 BY MR. SARVEY:

21 Q You state that you are relocating your
22 Livermore Station to Greenville Road, is that
23 correct?

24 FIRE CHIEF McCAMMON: That's correct.

25 MR. SARVEY: And have you finalized the

1 location and the financing plan for --

2 FIRE CHIEF McCAMMON: No, we haven't.

3 MR. SARVEY: -- that with the board of
4 supervisors?

5 FIRE CHIEF McCAMMON: No, we haven't.

6 MR. SARVEY: So at this point it's
7 speculative?

8 FIRE CHIEF McCAMMON: Well, it's for
9 sure that we're going to do it; it isn't
10 speculation about that. But the exact location we
11 haven't identified yet.

12 MR. SARVEY: Oh, so you're not -- can
13 you tell me how close to 580 this new station will
14 be?

15 FIRE CHIEF McCAMMON: At this point
16 probably the area we're looking in is about three-
17 quarters of a mile from 580.

18 MR. SARVEY: About three-quarters, okay.
19 From the time that -- I don't know if you can
20 answer this question or not, I thought I was going
21 to be cross-examining the Fire Chief here, so
22 excuse me if I ask questions --

23 FIRE CHIEF McCAMMON: I am the Fire
24 Chief.

25 MR. SARVEY: Oh, I'm sorry, I apologize.

1 From the time your personnel receives the alarm
2 how long does it take for your personnel to exit
3 the station, average?

4 FIRE CHIEF McCAMMON: Between a minute
5 and a minute and a half.

6 MR. SARVEY: Okay. And how many miles
7 is it from Greenville Road to Mountain House Road?

8 FIRE CHIEF McCAMMON: I don't know the
9 exact mileage.

10 MR. SARVEY: Were you aware that it's
11 10.7 miles?

12 FIRE CHIEF McCAMMON: I don't know the
13 exact mileage.

14 MR. SARVEY: How many miles is it from
15 the Mountain House exit to the project site?

16 FIRE CHIEF McCAMMON: Again, I don't
17 know the exact mileage to the project site; and
18 I'm relying on my staff that said it would be an
19 estimated 15-minute response time from the
20 existing location. And that response time would
21 reduce to ten minutes after the station was
22 relocated.

23 MR. SARVEY: So you --

24 FIRE CHIEF McCAMMON: So I don't know
25 the exact mileages.

1 MR. SARVEY: -- aren't aware that from
2 the Mountain House exit to the site was six miles?
3 You were not aware of that?

4 FIRE CHIEF McCAMMON: No.

5 MR. SARVEY: What's the maximum speed of
6 your fire truck?

7 FIRE CHIEF McCAMMON: Maximum speeds,
8 probably 65, 70 miles an hour.

9 MR. SARVEY: Okay. Were the daily
10 traffic congestion on 580 and 205 considered in
11 your estimated response time?

12 FIRE CHIEF McCAMMON: No, it wasn't.

13 MR. SARVEY: Thank you. How many times
14 during 2001 did your department provide mutual aid
15 to San Joaquin County?

16 FIRE CHIEF McCAMMON: I'm not sure of
17 the exact number of times. That whole area tends
18 to get covered by both jurisdictions because of
19 where the fires are located. A number of times a
20 lot of them start in Alameda County and burn into
21 San Joaquin County.

22 There's a lot of shared response on the
23 freeway, because we get 911 callers that call in
24 calls and aren't really sure where the auto
25 accident is. So both jurisdictions will respond.

1 So sometimes the calls end up in San Joaquin
2 County, and sometimes they end up in Alameda
3 County.

4 But we don't differentiate. We just
5 know that it's a call into the Altamont.

6 MR. SARVEY: Were you aware that Tracy
7 Rural Fire Department spends -- has 30 percent of
8 the responses to Alameda County?

9 FIRE CHIEF McCAMMON: I know that that
10 number's been used, but I'm not specifically aware
11 of what those responses are. And, again, like I
12 said before, a number of the fires may start in
13 Alameda County and burn into San Joaquin County.
14 And those fires actually are the jurisdiction of
15 the California Department of Forestry. So both
16 Tracy and the Alameda County Fire Department are
17 providing mutual aid to the state when we respond
18 to those.

19 And then in terms of our response to the
20 freeways, like I said before, you never know where
21 that auto accident is going to be. So what we do
22 in this particular case and in all the other cases
23 where we have shared jurisdiction with other, as
24 an example, the difference between the City of San
25 Leandro and the City of Oakland, we get a call for

1 an auto accident on the freeway. Oakland sends a
2 rig one way, we send one the other way because
3 nobody really knows where those accidents are.

4 So in this particular case we send a
5 piece of equipment from Livermore east. And Tracy
6 Rural sends something west.

7 MR. SARVEY: I guess there's been a lot
8 of misunderstanding between the two departments
9 since this whole process began. Do you feel that
10 the siting of this plant has affected the
11 relationship with the Alameda County Fire
12 Department and the Tracy and San Joaquin Fire
13 Department?

14 FIRE CHIEF McCAMMON: Absolutely not in
15 terms of the engine companies on the ground, and
16 the people that are actually getting the work
17 done. We have a very good relationship. And I've
18 had two or three discussions with Battalion Chief
19 Fragoso and Chief Estes regarding the mutual aid
20 and automatic aid.

21 And I know there's some political
22 pressure to deal with the issue of mutual aid from
23 Tracy's perspective. But at the line level the
24 relationship is very good.

25 MR. SARVEY: So there is some political

1 pressure outside the department, itself, because
2 of this siting? Would that be fair to say?

3 FIRE CHIEF McCAMMON: I believe in San
4 Joaquin County there is.

5 MR. SARVEY: Would that be fair to say?
6 Okay.

7 FIRE CHIEF McCAMMON: But I think just
8 to clarify my statement on that, it's about
9 something else. It isn't about the plant. It's
10 about service that Tracy is going to have to
11 provide to the Mountain House community and how
12 they're going to pay for that.

13 MR. SARVEY: In light of the mileage
14 figures that I've given you between the plant and
15 the new station, would you like to restate the
16 response time for the record?

17 FIRE CHIEF McCAMMON: No.

18 MR. SARVEY: Okay. Where will your
19 hazardous materials response come from?

20 FIRE CHIEF McCAMMON: Hazardous
21 materials response, we have our initial response,
22 we have our team located in Castro Valley and San
23 Leandro. We have six people on duty every day
24 that provide one of the three fully staffed hazmat
25 response teams in the County.

1 The second hazmat response team that has
2 availability to us would come from Lawrence
3 Livermore National Laboratory through mutual aid.

4 MR. SARVEY: And what's your estimated
5 response time from Castro Valley?

6 FIRE CHIEF McCAMMON: I think it was
7 stated in the staff report it would be about 30
8 minutes.

9 MR. SARVEY: Thirty minutes. Do you
10 know how far it is from Castro Valley to the
11 project site?

12 FIRE CHIEF McCAMMON: I don't have
13 specific mileages, no.

14 MR. SARVEY: Okay.

15 FIRE CHIEF McCAMMON: But I'll tell you
16 that given the capabilities of that hazmat
17 response team, it is the closest hazardous
18 materials response team that could respond to that
19 location, other than the Lawrence Livermore
20 National Laboratory.

21 I know that the Tracy Fire Department
22 has no hazardous materials capability similar to
23 ours at all.

24 MR. SARVEY: Well, considering that
25 these plants are going to be locating and you will

1 be providing hazardous material response, do you
2 think it would be appropriate that Tracy's
3 department be trained in that, as well?

4 FIRE CHIEF McCAMMON: Not really because
5 of the amount of resources that need to be
6 allocated to staff a hazardous materials response
7 team. It's not practical for Tracy to undertake
8 something like that.

9 MR. SARVEY: So, if the hazardous
10 material is transported through San Joaquin County
11 and there's an incident then Alameda County is
12 going to come all the way into San Joaquin County
13 to --

14 FIRE CHIEF McCAMMON: Our team is
15 available to them through mutual aid if they would
16 ask for it. And I'll give you an example.

17 When they had the tire fire, it quickly
18 overwhelmed Tracy's ability to manage that
19 incident. And an incident management team from
20 the Alameda County Fire Department and Alameda
21 County came over and managed that incident for
22 them in the first probably 12 to 24 hours until
23 state resources could come down and take over the
24 management of the incident.

25 MR. SARVEY: Okay. Has the East

1 Altamont Energy Center provided you with any
2 funding for relocating your plant?

3 FIRE CHIEF McCAMMON: They're going to
4 provide the funds that were stated in the things
5 that we've seen, the \$2.5 million. And that will
6 go towards construction and relocation of the
7 station.

8 MR. SARVEY: Has this affected your
9 testimony in any way?

10 FIRE CHIEF McCAMMON: No.

11 MR. SARVEY: Do you consider an area
12 with 20,000 homes a rural area?

13 FIRE CHIEF McCAMMON: I would say it's
14 not quite a rural area.

15 MR. SARVEY: Thank you. Thank you very
16 much. I'd like to ask Dr. Greenberg some
17 questions now.

18 Dr. Greenberg, you say you rely on
19 Alameda County's projections for response time,
20 correct? You don't compute your own, is that
21 correct?

22 DR. GREENBERG: That is correct.

23 MR. SARVEY: Okay. So you would agree
24 with the response times even though you have not
25 verified them?

1 DR. GREENBERG: I always rely on the
2 fire chiefs of any jurisdiction for any power
3 plant under the application procedure. The fire
4 chiefs know their response time; they know their
5 areas.

6 Driving a car or just taking distances
7 off a map really don't reflect what the true
8 response time is, particularly when it's a code
9 three, and they're able to use, you know, the
10 shoulder of the road or sometimes the traffic
11 actually does part and let the fire trucks go
12 through.

13 MR. SARVEY: Do you feel that the
14 gridlock on 580 over 205 and the daily traffic
15 congestion we have, do you think that will affect
16 response times at all?

17 DR. GREENBERG: I think it might reflect
18 yours and my transit times, but, no, not the fire
19 departments' response time. As I said earlier,
20 there's a shoulder; people do get out of the way.

21 Again, we always defer to the fire
22 chiefs. They know their territory.

23 MR. SARVEY: Have you examined that
24 shoulder over the Altamont Pass?

25 DR. GREENBERG: Have I ever driven on

1 the shoulder --

2 MR. SARVEY: No. Have you examined it?

3 DR. GREENBERG: Have I examined it? No,
4 only in driving over it many times.

5 MR. SARVEY: Okay. I don't want to get
6 off the track here, but I have some questions
7 about anhydrous ammonia. Is that going to be
8 transportation, that dealt with here? Or tomorrow
9 in hazardous materials?

10 MS. DeCARLO: Staff is available to
11 discuss hazardous materials today if the Committee
12 would so like.

13 HEARING OFFICER WILLIAMS: I think we're
14 going to do hazmat tomorrow.

15 MR. SARVEY: Tomorrow, okay.

16 HEARING OFFICER WILLIAMS: Tomorrow,
17 yes.

18 MR. SARVEY: That's fine, I'll save
19 these questions for tomorrow.

20 HEARING OFFICER WILLIAMS: Yes, you can
21 save them.

22 MR. SARVEY: Are you aware that the City
23 of Tracy Fire Department is experiencing budgetary
24 problems?

25 DR. GREENBERG: No, I'm not aware of

1 that.

2 MR. SARVEY: Have you recommended any
3 mitigation for any of the three power plants the
4 CEC is locating near Tracy -- to the Tracy Fire
5 Department, I'm sorry.

6 DR. GREENBERG: To the Tracy Fire
7 Department? As far as East Altamont is concerned,
8 no. The mitigation that is included in the
9 staff's recommendations and conditions of
10 certification address the fire department of the
11 proper jurisdiction, which in this case is the
12 Alameda County Fire Department.

13 The same would hold true for Tesla. In
14 regards to the Tracy Peaker facility, there was a
15 conversation with Battalion Chief Fragoso, and he
16 was asked specifically whether he needed any
17 additional staff or materials. And the response
18 was no in the context of worker safety fire
19 protection.

20 Instead I understand that there was, at
21 that case, part of a community development grant
22 or overall, you know, general services moneys that
23 were provided to the City of Tracy. And I don't
24 know whether any of that went to emergency
25 response or fire protection.

1 MR. SARVEY: So you did not require any
2 mitigation for the Tracy Fire Department in the
3 siting of the Tracy Peaker Plant, or Tesla or East
4 Altamont, correct?

5 DR. GREENBERG: Correct.

6 MR. SARVEY: So you did not require the
7 Tracy Peaker to supply the \$100,000 a year in
8 mitigation that Larry Fragoso requested?

9 DR. GREENBERG: That was not a part of
10 the worker safety fire protection request from
11 Battalion Chief Fragoso. It may have been part of
12 something, another. And so it may be included.
13 But I'm not aware of whether it was or wasn't.

14 HEARING OFFICER WILLIAMS: I would state
15 for the record that Battalion Chief Fragoso is
16 sitting next to Mr. Sarvey, to Mr. Sarvey's left.
17 He just conferred with Mr. Fragoso.

18 MR. SARVEY: Could we swear him in,
19 please?

20 HEARING OFFICER WILLIAMS: Applicant, do
21 you have any --

22 MR. WHEATLAND: We have no objection,
23 but I think it would be more appropriate to
24 complete Mr. Greenberg's testimony before we hear
25 from the next witness.

1 MS. DeCARLO: Yes.

2 MR. SARVEY: Okay.

3 MS. DeCARLO: And then staff would also
4 like to do some redirect.

5 MR. SARVEY: Okay.

6 HEARING OFFICER WILLIAMS: Yes, so in
7 turn.

8 MR. SARVEY: I'll finish with Dr.
9 Greenberg; I'm sorry.

10 HEARING OFFICER WILLIAMS: Okay.

11 MR. SARVEY: Has any CEC project manager
12 contacted you on your lack of communication with
13 Terrel Estes, the Tracy Fire Chief, Dr. Greenberg?

14 DR. GREENBERG: No, not at all.

15 MR. SARVEY: Okay. Are you aware that
16 Tesla is negotiating to provide fire resources to
17 the Tracy Fire Department?

18 MS. DeCARLO: Objection, relevance to
19 this proceeding.

20 MR. SARVEY: It goes to cumulative
21 impact.

22 HEARING OFFICER WILLIAMS: I'll allow
23 it.

24 DR. GREENBERG: I'm aware that there are
25 ongoing negotiations between the applicant for the

1 Tesla project and both Alameda and San Joaquin
2 Valley interests, but I'm not aware of any
3 specific requests at this point regarding Tesla.

4 MR. SARVEY: Okay. I'm through with Dr.
5 Greenberg. Thank you, sir.

6 But I'd like to have Mr. Fragoso sworn
7 in for some testimony, please.

8 HEARING OFFICER WILLIAMS: Well, in
9 turn. We'll get there. Applicant, do you have
10 any questions?

11 MR. WHEATLAND: We have no questions,
12 thank you.

13 HEARING OFFICER WILLIAMS: Staff.

14 MS. DeCARLO: Some redirect, please.

15 HEARING OFFICER WILLIAMS: Yes.

16 REDIRECT EXAMINATION

17 BY MS. DeCARLO:

18 Q Mr. McCammon, does freeway traffic have
19 a significant impact on response time?

20 FIRE CHIEF McCAMMON: It can have an
21 impact on response times, but as was mentioned
22 earlier, we do use the shoulder very frequently to
23 try and make up some of that lost time.

24 MS. DeCARLO: And would a serious
25 unbreachable traffic on I-580 prevent the Alameda

1 County Fire Department from responding to the East
2 Altamont Energy Center from the new location?

3 FIRE CHIEF McCAMMON: Can you repeat
4 that, please?

5 MS. DeCARLO: Are there alternatives
6 from the new location to getting to the --

7 FIRE CHIEF McCAMMON: Yes.

8 MS. DeCARLO: -- East Altamont?

9 FIRE CHIEF McCAMMON: Yes, there are.

10 MS. DeCARLO: So you're not just limited
11 to the I-580?

12 FIRE CHIEF McCAMMON: Correct.

13 MS. DeCARLO: Thank you. Mr. Greenberg,
14 given the distance involved, do you believe the
15 response times identified by Alameda County Fire
16 Department to be reasonable?

17 DR. GREENBERG: They're not only
18 reasonable; once again, they're consistent with
19 other rural fire departments and rural power plant
20 locations in the State of California.

21 MS. DeCARLO: And would your conclusion
22 change if the area were no longer designated rural
23 or considered rural, but more urban when Mountain
24 House becomes more developed?

25 DR. GREENBERG: No, it wouldn't. You

1 know, we're not talking here about a project in
2 the middle of San Francisco or Los Angeles, where
3 literally there could be a fire department next
4 door or a block away.

5 We are still talking about, at best, a
6 suburban environment. But certainly not any city
7 environment like Los Angeles or San Francisco.

8 So these response times necessarily
9 vary. And once again, we do defer significantly
10 to the local jurisdiction, and in this case that's
11 Alameda County Fire Department, as to whether or
12 not they can adequately respond.

13 MS. DeCARLO: Thank you. That's all for
14 staff. Oops, one more.

15 Can you please provide some
16 clarification on the Tracy Peaker project?

17 DR. GREENBERG: I'm referring to a memo
18 dated the 19th of December 2001. And this is from
19 my staff, this is a record of conversation that my
20 staff had with Battalion Chief Larry Fragoso.

21 In this he retracted his initial
22 statement to us of November 20th regarding
23 personnel needs due to the proposed Tracy Peaker
24 project. Instead he said that GWF is helping with
25 training and equipment as needed, rather than

1 requiring an ongoing cost.

2 So in response to Mr. Sarvey's question,
3 to the best of my recollection there was nothing
4 added to the worker safety fire protection
5 section, but rather it was part of another section
6 of the staff assessment because of an agreement
7 reached between the City of Tracy and GWF.

8 So GWF ended up providing something to
9 the fire department, but it wasn't part of worker
10 safety fire protection to the best of my
11 recollection.

12 HEARING OFFICER WILLIAMS: Mr. Sarvey,
13 have you seen that record of conversation that Mr.
14 Greenberg --

15 MR. SARVEY: No, I have not.

16 DR. GREENBERG: -- just referred to? Do
17 you have a copy of it? Well, at some point can we
18 have a copy made of that?

19 MS. DeCARLO: Yeah, we can get a copy
20 made.

21 HEARING OFFICER WILLIAMS: And
22 distribute it to the parties in case that's needed
23 to -- in Mr. Sarvey's presentation.

24 Anything further?

25 MS. DeCARLO: No, that's all for staff.

1 HEARING OFFICER WILLIAMS: Applicant, do
2 you have anything?

3 MR. WHEATLAND: No.

4 EXAMINATION

5 COMMISSIONER PERNELL: I do have a
6 question for Mr. McCammon. And that is, actually
7 a couple of questions. I think I have the answer
8 to the first one, but let me just pose the
9 question.

10 The response time from your battalion to
11 the project site, is that 15 minutes?

12 FIRE CHIEF McCAMMON: That's what's
13 stated in the staff report, yes.

14 COMMISSIONER PERNELL: In your staff
15 report.

16 FIRE CHIEF McCAMMON: The existing
17 station.

18 COMMISSIONER PERNELL: And then an
19 approximate timeline for the construction of the
20 new facility, or the new fire station?

21 FIRE CHIEF McCAMMON: Right. We're in
22 the process of getting an architect to design the
23 station now. And usually once you get the
24 architect on board it's probably a year to a year
25 and a half to completion.

1 COMMISSIONER PERNELL: So an
2 approximately two-year timeline?

3 FIRE CHIEF McCAMMON: No, a year to a
4 year and a half for completion. A year for
5 construction and six months for design and
6 permitting.

7 COMMISSIONER PERNELL: Oh, I see. Okay.

8 FIRE CHIEF McCAMMON: And we're in the
9 process of enlisting an architect now.

10 COMMISSIONER PERNELL: And then once
11 that happens, it decreases the response time?

12 FIRE CHIEF McCAMMON: Yes.

13 COMMISSIONER PERNELL: By five minutes?

14 FIRE CHIEF McCAMMON: By five minutes.

15 COMMISSIONER PERNELL: Thank you, Mr.
16 Williams.

17 HEARING OFFICER WILLIAMS: Anything
18 further based upon questions from the dais?

19 Mr. McCammon, I'd like to thank you for
20 taking time out of your busy schedule to come by
21 and offer testimony to us. And unless you want to
22 stick around you're excused.

23 I would also state, just to clear up
24 something you raised earlier, Mr. Sarvey, about
25 prefiled testimony. At the risk of confusing the

1 situation even more, I think I'll try to offer
2 some comments that I think might help clarify this
3 whole issue.

4 Basically the Fire Chief is here to put
5 a face on what staff offered in the final staff
6 assessment. So essentially once the final staff
7 assessment was filed, that's staff's testimony.
8 So they don't have to refile that; it's already a
9 part of our record.

10 So, essentially the Fire Chief, Mr.
11 McCammon, is here to put a face on that testimony,
12 and to provide an opportunity to delve into those
13 matters contained in the worker safety and fire
14 protection section.

15 So I hope that clarifies it a little bit
16 for you.

17 And also for the record what I'd like to
18 do is I'd like to make clear that there is no
19 objection to the worker safety prong of the worker
20 safety and fire protection testimony. That is
21 your issue dealt solely with the fire protection
22 prong of that testimony.

23 MR. SARVEY: And emergency services, as
24 well.

25 HEARING OFFICER WILLIAMS: And emergency

1 services which we've covered some of that.
2 Applicant's testimony contained within exhibit 4A
3 is both the worker safety and the fire protection
4 testimony. And I want to make clear that you
5 didn't have any objection to the worker safety
6 prong.

7 And, staff, you had no objection,
8 either.

9 Okay, with that, I think we can swear in
10 and allow for your presentation, Mr. Sarvey. We
11 can swear in your witness.

12 Whereupon,

13 LARRY FRAGOSO

14 was called as a witness herein, and after first
15 having been duly sworn, was examined and testified
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. SARVEY:

19 Q Mr. Fragoso, do you feel that the issue
20 of response in this matter is more important in
21 the area of emergency medical services, is that
22 correct?

23 A Repeat?

24 Q Do you feel that the more important
25 issue in the matter of fire protection is the

1 emergency medical response services that are to be
2 provided?

3 A That's correct.

4 Q And how far is the location of your
5 nearest fire house?

6 HEARING OFFICER WILLIAMS: Excuse me,
7 did we swear the witness?

8 MR. SARVEY: Yes, we did.

9 HEARING OFFICER WILLIAMS: We did? I'm
10 sorry, I was temporarily distracted.

11 FIRE CHIEF FRAGOSO: From the site of
12 the Calpine energy plant to our future site there
13 at Mountain House, the fire station will be 3.5
14 miles.

15 BY MR. SARVEY:

16 Q Okay. And how far is the location of
17 your nearest station to the Tesla plant?

18 A 3.7 miles.

19 Q In your conversation with the CEC Staff
20 concerning mitigation of the Tracy Peaker project,
21 were you promised training and additional
22 equipment to drop your request for the \$100,000 a
23 year, is that correct?

24 A That's correct.

25 MR. SARVEY: Nothing further.

1 HEARING OFFICER WILLIAMS: Any cross-
2 examination, applicant?

3 MR. WHEATLAND: No, I have no questions.

4 HEARING OFFICER WILLIAMS: Staff?

5 MS. DeCARLO: Staff has no questions.

6 MR. SARVEY: I've been informed that I
7 need to have my witness state his name and
8 qualifications for the record.

9 HEARING OFFICER WILLIAMS: I knew you
10 were missing something.

11 (Laughter.)

12 MR. SARVEY: It wasn't the swear-in, Mr.
13 Williams.

14 FIRE CHIEF FRAGOSO: The name is Larry
15 Fragoso, F-r-a-g-o-s-o. I'm Battalion Chief with
16 the City of Tracy Fire Department.

17 HEARING OFFICER WILLIAMS: Thank you.
18 Does that conclude your presentation?

19 MR. SARVEY: I'm done, thank you, Mr.
20 Williams.

21 HEARING OFFICER WILLIAMS: Okay, good.
22 All right, then, we'll admit applicant's exhibit
23 4A and the corresponding sections of the final
24 staff assessment and errata in the topic of worker
25 safety and fire protection.

1 We'll also mark as next in order staff
2 exhibit, the telephone conversation record from
3 F.E. Ferracas to Larry Fragoso re the Tracy Peaker
4 project. And, again, we'll give it a number with
5 the revised exhibit list tomorrow.

6 We'll also close out the topic of worker
7 safety and fire protection.

8 MS. MENDONCA: Roberta Mendonca, the
9 Public Adviser. I wasn't clear about how you
10 would be taking public comment. But I understand
11 there's a member of the public that would like to
12 speak on the fire protection issue, and she needs
13 to pick her children up, so I was wondering if you
14 might take the public comment at each topic, at
15 least at this point?

16 HEARING OFFICER WILLIAMS: Yes, I think
17 we indicated, and thank you, Roberta, for bringing
18 that to my attention. We will be taking public
19 comment after each topic.

20 So, if by chance I don't say anything,
21 the members of the public are encouraged, if
22 Roberta's not here, to raise your hand or do
23 whatever is necessary to call our attention to
24 you.

25 We have Ms. Susan Sarvey, a member of

1 the public.

2 MS. SARVEY: Hi, I'm Susan Sarvey.

3 Thank you for letting me speak. I just have a
4 thing I'll read. It does deal with public health
5 and safety.

6 There is no need for this plant. Fraud
7 made California think they needed this plant.
8 Consumer fraud is being committed now in the new
9 contract for a plant we don't need. We will pay
10 Calpine \$58 per megawatt, when in the deregulated
11 market you can buy a megawatt for \$30. Tesla is
12 building with no contract. Why can't Calpine
13 compete in a fair marketplace? This plant's
14 survival depends on fleecing the ratepayer.

15 Given the choice of breathing clean air
16 or sitting in the dark, most people would choose
17 to breathe. Given the choice of being able to eat
18 or drink or sitting in the dark, most people would
19 want to eat or drink.

20 You are destroying our air and wasting
21 our water taking valuable farmland out of
22 production. You will evaporate 7000 acrefeet of
23 water per year taking 1800 acres of farmland out
24 of production.

25 We have water wars in Tracy because of

1 the lack of water. Electricity is not a necessity
2 for survival. Air and water are must-haves.

3 In this weak economy bleeding the
4 ratepayer and putting their health in jeopardy is
5 just unacceptable. Why would anyone want to buy a
6 house next to this?

7 Anhydrous ammonia use presents a public
8 health and safety risk and a terrorist threat. It
9 can be made to explode. And once again you want
10 to make millions of dollars but provide us with no
11 real security.

12 You want to provide hazmat response from
13 Castro Valley. To do this you must never bring
14 this truck onto San Joaquin County land. If you
15 want to come on our roads you must mitigate with
16 our fire department immediately.

17 Basic humanity would call for you to use
18 next-door Mountain House Fire Station rather than
19 service clear on the other side of the pass. If
20 you live in Tracy, and I emphasize if you live
21 here, because of the comments I just heard,
22 regardless of your feelings about this plant,
23 everyone knows the past traffic and the chances of
24 you being able to come over the pass to get to
25 Calpine in under ten minutes is virtually

1 nonexistent.

2 All these reckless choices to make money
3 putting real lives at risk. What kind of people
4 are you?

5 In terms of the CEC, I would like to
6 ask, how can you allow Byron Bethany to testify in
7 violation of your own rules of order. The
8 continuous lack of regard of your own procedural
9 rules in the siting of this plant is very
10 confusing. What is the justification for the lack
11 of regard for your own policies? This would never
12 have been allowed to happen in GWF. Why is it
13 now?

14 Commissioner Pernell, you looked out for
15 us when we desperately needed help in getting
16 public notice to our community of what was coming
17 to happen to us. I beseech you, please, please
18 help make these people let our people know what is
19 happening to us. Because you know we do have GWF
20 coming. You know we're sitting in hearings for
21 Tesla. We're not talking about 500 tons of
22 particulate matter. We're really talking in 2005
23 we're going to have over 1000 tons of crap dumped
24 on us.

25 And I think people with children, as

1 many people as we have here that are sick already,
2 with birth defects, asthma and everything else, I
3 do not believe our community does not care.

4 And I have been talking with the farmers
5 about the water that's going to be sold. And they
6 are just appalled. That water will evaporate.
7 It's never going to come back. And these men
8 cannot sit here and tell you, we guarantee we're
9 going to have extra water next year. What happens
10 when we have a drought and you're in a 30-year
11 contract?

12 These are very serious issues. And we
13 do not need this power.

14 Thank you so much for letting me speak.

15 HEARING OFFICER WILLIAMS: Thank you,
16 Ms. Sarvey.

17 MS. DeCARLO: Point of clarification for
18 worker safety/fire protection. I know we marked
19 Mr. Sarvey's exhibits. Did we enter those into
20 the record, as well? Is that appropriate to
21 discuss at this point?

22 HEARING OFFICER WILLIAMS: I don't
23 believe he offered any exhibits in this part of
24 his presentation, or did he, other than the one
25 that we --

1 MS. DeCARLO: I was just referring to
2 the two letters, and then the June 5th document --

3 HEARING OFFICER WILLIAMS: Right.

4 MS. DeCARLO: -- we discussed earlier
5 today.

6 HEARING OFFICER WILLIAMS: Well, the
7 June 5th document has been marked for ID. And I
8 think the agreement was that Mr. Boyd tomorrow --

9 MS. DeCARLO: Okay.

10 HEARING OFFICER WILLIAMS: -- allow Mr.
11 Sarvey to present Mr. Sarvey's testimony, or
12 sponsor it.

13 Is that your recollection, Mr. Sarvey?

14 MR. SARVEY: Yes, it is.

15 HEARING OFFICER WILLIAMS: That Mr. Boyd
16 will sponsor your testimony tomorrow?

17 MR. SARVEY: I have some public comment
18 I'd like to make, as well, --

19 HEARING OFFICER WILLIAMS: Go right
20 ahead.

21 MR. SARVEY: -- if that's allowed.

22 MR. WHEATLAND: Oh, I'm going to object
23 strenuously. He can wear whichever hat he likes,
24 but he can't wear two different hats, actually
25 three now because he's worn CARE's hat today; he's

1 worn his own hat as an intervenor; and now he's
2 wearing a hat as public comment --

3 MR. SARVEY: I'll represent you, too,
4 Mr. Wheatland.

5 (Laughter.)

6 MR. SARVEY: But in any event, Mr.
7 Williams said at the beginning that public comment
8 was allowed to define issues and explain issues
9 that were brought up that were not allowed to be
10 addressed, and I believe that's what I'm
11 attempting to do.

12 MR. WHEATLAND: But --

13 HEARING OFFICER WILLIAMS: We'll allow
14 it.

15 MR. WHEATLAND: May I make just a
16 suggestion? Just so that this record is clear, if
17 he wishes to make comment as an intervenor, I have
18 no objection. If he would like to sit in that
19 chair and speak as an intervenor in this
20 proceeding, I'm happy to do that.

21 But to say now that he's making public
22 comment I think blurs his role, and confuses the
23 record in terms of the appropriate response.
24 So --

25 HEARING OFFICER WILLIAMS: Is that

1 satisfactory to you to make --

2 MR. SARVEY: The chair doesn't matter to
3 me, Mr. Williams, thank you.

4 HEARING OFFICER WILLIAMS: Okay, --

5 (Laughter.)

6 PRESIDING MEMBER KEESE: But I will note
7 you're doing such a good job, you're going to be
8 defined as an attorney shortly, you know, --

9 (Laughter.)

10 PRESIDING MEMBER KEESE: -- and that's
11 going to limit your flexibility in the future.

12 MR. SARVEY: Yeah, I won't be able to
13 testify, right?

14 (Laughter.)

15 MR. SARVEY: We'll find that out
16 tomorrow.

17 The comment I wanted to make was that
18 Mr. Fragoso was told by the CEC during the Tracy
19 Peaker hearings that they would provide additional
20 mitigation to the Tracy Fire Department.

21 Now, Mr. Greenberg knows the community
22 benefits package does not provide any moneys to
23 the Tracy Fire Department.

24 And my fire department was duped to
25 believe that the CEC would provide the mitigation.

1 I have demonstrated that the response times
2 estimated by Alameda County do not include traffic
3 impacts, and the CEC Staff has admitted that he's
4 not verified the response times.

5 Obviously, once again, San Joaquin
6 County Fire Department, Tracy Fire Department will
7 be impacted with no mitigation.

8 Thank you.

9 HEARING OFFICER WILLIAMS: Okay. All
10 right, with that we'll close out the worker safety
11 and fire protection with the proviso that we'll
12 take Mr. Sarvey's testimony sponsored by Mr. Boyd
13 tomorrow on the exhibit that's been marked for
14 identification.

15 With that, I think we're ready to
16 proceed to land use. And --

17 MS. DeCARLO: Actually one of our
18 witnesses doesn't appear to be here yet for land
19 use. We had anticipated that land use would occur
20 after noise.

21 HEARING OFFICER WILLIAMS: Okay.

22 MS. DeCARLO: And so we're prepared to
23 present our noise testimony now, if the others
24 are.

25 HEARING OFFICER WILLIAMS: Okay, we'll

1 move then to noise. Applicant, are you ready?

2 MR. WHEATLAND: Yes, I'm ready. It's
3 customary for the applicant to make the initial
4 presentation, but in this area we have reached an
5 agreement with the staff so that there are no
6 remaining disputed issues between the staff and
7 the applicant on noise.

8 But I would ask the Committee's
9 indulgence to allow the staff to make the
10 presentation in this area.

11 HEARING OFFICER WILLIAMS: That's fine.
12 Staff?

13 MS. DeCARLO: That's fine with staff.
14 Okay, staff's witnesses in the area of noise will
15 be Steve Baker and Jim Buntin, and both need to be
16 sworn in.
17 Whereupon,

18 STEVE BAKER and JIM BUNTIN
19 were called as witnesses herein, and after first
20 having been duly sworn, were examined and
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MS. DeCARLO:

24 Q Okay, Mr. Baker, can you please state
25 your name for the record?

1 MR. BAKER: Steve Baker.

2 MS. DeCARLO: Was a statement of your
3 qualifications attached to this testimony?

4 MR. BAKER: Yes.

5 MS. DeCARLO: And what is your job
6 title?

7 MR. BAKER: Senior mechanical engineer.

8 MS. DeCARLO: Could you briefly state
9 your education and experience as it pertains to
10 noise and vibration?

11 MR. BAKER: I have a bachelors in
12 mechanical engineering and 28 years of experience
13 in the electric power industry, which includes
14 permitting, designing and constructing power
15 plants. And approximately ten years of experience
16 at the Energy Commission performing or supervising
17 the performance of noise analysis on siting cases.

18 MS. DeCARLO: Did you assist in
19 preparing the testimony entitled noise and
20 vibration contained in the final staff assessment
21 exhibit 1 and the October 1st staff errata marked
22 as exhibit 1A and the noise staff errata submitted
23 today, October 15th?

24 MR. BAKER: Yes.

25 MS. DeCARLO: And do the opinions

1 contained in your testimony represent your best
2 professional judgment?

3 MR. BAKER: Yes.

4 MS. DeCARLO: Mr. Buntin, can you please
5 state your name for the record?

6 MR. BUNTIN: Jim Buntin.

7 MS. DeCARLO: Was a statement of your
8 qualifications attached to your testimony?

9 MR. BUNTIN: Yes.

10 MS. DeCARLO: What is your job title?

11 MR. BUNTIN: I'm a principal consultant
12 with Brown and Buntin Associates. We're
13 contractors -- subcontractors, actually, serving
14 as staff to the Energy Commission.

15 MS. DeCARLO: Could you briefly state
16 your education and experience as it pertains to
17 noise and vibration?

18 MR. BUNTIN: Yes. My degree is actually
19 in zoology, but I've been working in environmental
20 noise since 1972, starting with Kern County Health
21 Department.

22 In 1980 I ran the EPA Region IX Regional
23 Noise Technical Assistance Center. And in 1981
24 began the company Brown and Buntin Associates.
25 And we've been doing environmental noise analyses

1 as a company since 1981.

2 MS. DeCARLO: And did you assist in
3 preparing the testimony entitled noise and
4 vibration in the final staff assessment, exhibit
5 1, along with the errata, exhibit 1A, and the
6 staff errata filed today?

7 MR. BUNTIN: Yes.

8 MS. DeCARLO: Thank you. Have there
9 been any changes since publication of the final
10 staff assessment?

11 MR. BAKER: Yes, there have. Since the
12 final staff assessment was filed Calpine has
13 managed to conclude a deal with nearby residents
14 named Gary and Dolores Kuhn, whereby Calpine will
15 relocate the Kuhns to a residence farther from the
16 power plant site. When they do so this will
17 insure that there will be no significant adverse
18 noise impacts on the Kuhns' residence from the
19 project.

20 MS. DeCARLO: Can you please explain the
21 changes you've offered today?

22 MR. BAKER: In the errata dated October
23 15th we're changing some numbers in our final
24 staff assessment to reflect the relocation of the
25 Kuhn residence. And the chief change is to

1 propose a condition of certification Noise-6.
2 These changes all reflect the fact that once
3 Calpine has performed the proposed mitigations to
4 nearby residences that there will be no
5 significant noise impacts on any sensitive
6 receptors near the project.

7 MS. DeCARLO: And did these changes
8 alter your conclusion regarding the potential for
9 noise impacts from the project?

10 MR. BUNTIN: No, the final conclusion is
11 the same, that there would be no noise impacts.
12 It's just simply a different set of circumstances.

13 MS. DeCARLO: Thank you. Staff is
14 available for cross-examination.

15 MR. WHEATLAND: We have no questions of
16 the staff.

17 HEARING OFFICER WILLIAMS: No questions.
18 Mr. Sarvey. No questions?

19 MR. WHEATLAND: Oh, I'm sorry, if I
20 could we do have --

21 PRESIDING MEMBER KEESE: Can I just
22 clarify a typo, I believe, on page 2. The second
23 major additional paragraph says the Kuhn home
24 borders the residence at site 2. I think you mean
25 site 3?

1 MR. BAKER: That's correct. Yes.

2 COMMISSIONER PERNELL: I'm sorry, what
3 page is that?

4 PRESIDING MEMBER KEESE: Page 2 of the
5 errata. The first major addition says the cost of
6 home, site 2. And then the second one says the
7 Kuhn home, site 2. It should be site 3.

8 COMMISSIONER PERNELL: On both --

9 PRESIDING MEMBER KEESE: Just on the
10 second one.

11 MR. BAKER: On the paragraph beginning
12 On October --

13 PRESIDING MEMBER KEESE: On October
14 11th.

15 COMMISSIONER PERNELL: Okay, all right.
16 Thank you.

17 MR. WHEATLAND: We actually have just
18 two points of clarification. They're not
19 necessarily cross-examination questions.

20 HEARING OFFICER WILLIAMS: Okay.

21 MR. WHEATLAND: And if you would,
22 please, I'm going to ask Mr. Greene if he could
23 briefly raise these two points of clarification.

24 Just state your name for the record.

25 MR. GREENE: Okay.

1 HEARING OFFICER WILLIAMS: Well, wait a
2 second. Do we need to swear --

3 MR. WHEATLAND: No, he's not going to
4 testify. He's just going to ask for a point of
5 clarification with respect to their testimony.
6 They previously discussed the testimony. We'd
7 like to clarify this point for the --

8 HEARING OFFICER WILLIAMS: Okay. Well,
9 we still need to -- would you identify yourself
10 for the record.

11 MR. GREENE: Yes, for the record my name
12 is Rob Greene. I'm the Manager of Noise and
13 Acoustics at URS Corporation appearing for the
14 applicant.

15 EXAMINATION

16 BY MR. GREENE:

17 Q We have just a couple of comments. One
18 was already picked up that site 3 instead of site
19 2.

20 Also on noise table 6, I believe in the
21 second column over we would look at that being the
22 expected plant noise levels, rather than permitted
23 plant noise levels? Is that just a left-over?

24 MR. BUNTIN: Perhaps the clarification
25 is this. For site 2 that number 43 that's been

1 handwritten in there is the permitted level. And
2 for site 4 you're missing the asterisk, I'm sorry
3 to say, but for site 4 in the remainder of the
4 text it says estimated based on the applicant's
5 projections.

6 MR. GREENE: Okay, that --

7 MR. BUNTIN: So it's really an estimated
8 noise level.

9 MR. GREENE: That would be acceptable.
10 And finally in the -- and I believe this is just
11 again a remainder of some housekeeping. In the
12 errata filed today it did not change some of the
13 text in the prior FSA regarding the monitoring
14 requirement.

15 And in addition to the 25-hour survey at
16 site 2, it calls for a short-term survey
17 measurements to be conducted. And it currently
18 would say monitoring at sites 3 and 4. And we
19 would submit that site 3 is no longer an issue, so
20 that monitoring would occur at site 4, is that
21 correct?

22 MR. BUNTIN: I'd agree with that. That
23 is an oversight on our part.

24 MR. GREENE: Okay. I would say, I don't
25 think we have any other objections, that's fine.

1 MR. WHEATLAND: Thank you very much,
2 that's all the questions that we have.

3 HEARING OFFICER WILLIAMS: Well, to help
4 me out, I'm going to request that, staff, could
5 you, at some point, give us a cleaned-up
6 version --

7 MS. DeCARLO: Yes, we will.

8 HEARING OFFICER WILLIAMS: -- of this
9 with all the corrections and we'll take a look at
10 it one more time to make sure that it's right.
11 Again, I'll have a new exhibit number tomorrow.
12 So we'll take another look at it and make sure the
13 parties agree with what's there.

14 Okay. And, Mr. Sarvey, you have no
15 questions?

16 MR. SARVEY: No questions.

17 HEARING OFFICER WILLIAMS: Okay. Well,
18 I think then with the proviso that I just
19 mentioned about cleaning up the errata, we will
20 close out --

21 MR. WHEATLAND: I would just like to
22 state for the record that we would stipulate to
23 the proposed noise conditions of certification as
24 described today in the staff's testimony.

25 We would like just to note for the

1 record that we don't necessarily agree with the
2 methodology that they applied, but since their
3 methodology reaches the same conclusion that we
4 would reach, that there is no significant impact,
5 we believe there's no issue in dispute between the
6 parties.

7 HEARING OFFICER WILLIAMS: Very good.

8 MR. WHEATLAND: And by agreement with
9 the staff, we will not be offering any testimony
10 in the noise area. And we would rely solely on
11 the testimony of the staff to support the findings
12 and conclusions with respect to noise.

13 HEARING OFFICER WILLIAMS: So then you
14 are effectively then withdrawing applicant's 4C?

15 MR. WHEATLAND: That's correct, we will
16 not be moving that testimony into evidence.

17 HEARING OFFICER WILLIAMS: And 4C-1?
18 And 4C-2?

19 MR. WHEATLAND: Yes. Well, -- yes. 4C,
20 4C-1 and -- 4C-2 was intended to be the letter
21 from Gary and Dolores Kuhn accepting the measures
22 that the applicant had proposed for the
23 replacement or relocation of their residence. So
24 I think if the staff would agree we'd still intend
25 to put that exhibit into evidence.

1 MS. DeCARLO: Yeah, that's acceptable.
2 It's also acceptable if you wanted to, I don't
3 know if you've already done so, but include the
4 noise testimony from the AFC. We wouldn't object
5 to that.

6 MR. WHEATLAND: Oh, okay, so that we
7 could move into evidence that section of the AFC
8 that applies to noise.

9 HEARING OFFICER WILLIAMS: Okay. That
10 will be admitted, as well as the -- the AFC noise
11 testimony will be admitted as 4C. And the errata
12 testimony of Gary and Dolores Kuhn will be 4C-1.
13 Now, do we have that --

14 MR. WHEATLAND: We're having copies made
15 at this moment.

16 HEARING OFFICER WILLIAMS: Okay.

17 MR. WHEATLAND: It's been -- we've
18 discussed it previously with the parties. We also
19 have two additional documents that were identified
20 in the applicant's list of exhibits that didn't
21 carry over to the Committee's list.

22 I would offer both of these with the
23 concurrence of the staff, but only if the staff
24 would concur to these, as well. Let me just ask
25 that we pass these out, please.

1 The first is a letter of September 25,
2 2002, from Mr. and Mrs. Costa regarding an offer
3 of residential sound attenuation at their
4 residence.

5 MS. DeCARLO: Staff does not object to
6 the inclusion of that exhibit.

7 MR. WHEATLAND: So if that could be then
8 identified as applicant's next exhibit in order.

9 HEARING OFFICER WILLIAMS: Okay, then
10 the 4C-2 will be the September 25, 2002 letter
11 from Mr. and Mrs. Costa.

12 MR. WHEATLAND: And the second document
13 is a letter of December 17, 2001 to Ms. Cheri
14 Davis from Adolph Martinelli, the Director of
15 Alameda County Community Development Agency,
16 regarding the noise section of the PSA. This was
17 referenced in the staff testimony, and I would
18 offer it only if the staff wished to have it in
19 the record.

20 MS. DeCARLO: There's no objection.

21 HEARING OFFICER WILLIAMS: Okay, that'll
22 come in as 4C-3.

23 MR. WHEATLAND: So then I would move
24 that 4C-2 and 4C-3 be admitted into evidence.

25 HEARING OFFICER WILLIAMS: Okay. So

1 that's these exhibits are admitted, 4C-1; 4C
2 through C -- excuse me -- 4C, 4C-1 and 4C-2 and
3 4C-3 are admitted without objection.

4 And the Committee will also admit the
5 corresponding sections of the final staff analysis
6 and the errata offered by staff today. So your
7 exhibits are in, as well.

8 Okay, with that I think we can close out
9 noise and move on to the land use testimony.

10 MS. DeCARLO: And I apologize; it
11 appears that one of our witnesses, Eileen Allen,
12 has not yet made it. I know she was leaving
13 awhile ago. Cheri Davis is currently making calls
14 to see if we can locate her.

15 HEARING OFFICER WILLIAMS: Well, let's
16 take, say, a ten-minute recess. We'll be off the
17 record.

18 (Brief recess.)

19 PRESIDING MEMBER KEESE: Let me mention
20 one procedural item. We're going to take up a
21 number of issues tomorrow. I certainly hope we
22 finish all those issues in an expedited manner.
23 We have one more day of hearings that's set
24 firmly, that's the 21st. And we have the 22nd in
25 reserve.

1 It's the Committee's preference that we
2 not use the 22nd, which means that it could be a
3 real long day on Monday, the 21st, if we leave a
4 lot of things to the 21st.

5 So, we'll try to get through the whole
6 schedule tomorrow as rapidly as we've done today.
7 I think everybody's done a spectacular job today
8 with our one remaining item. We'll try to do the
9 same thing tomorrow, but anything that we put over
10 will go to Monday, and we'll plan on going as long
11 as we have to to finish the agenda on Monday, the
12 21st.

13 HEARING OFFICER WILLIAMS: Thank you,
14 Mr. Chairman. With that said, I think we're ready
15 to proceed to the staff's witness on land use,
16 which we will continue to the 21st, after staff's
17 presentation. Is that correct, applicant?

18 MR. WHEATLAND: Yes, that's our
19 understanding.

20 HEARING OFFICER WILLIAMS: Is that your
21 understanding, Mr. Sarvey?

22 MR. SARVEY: (Affirmative nod.)

23 HEARING OFFICER WILLIAMS: Okay. He
24 indicated yes.

25 (Laughter.)

1 MR. SARVEY: Yes, Mr. Williams.

2 HEARING OFFICER WILLIAMS: Okay. With
3 that, staff.

4 MS. DeCARLO: Yes, one point of
5 clarification. Staff intends to refer to the
6 amended and restated East Altamont Energy Center
7 farmlands mitigation agreement. And it was our
8 understanding that the applicant would like to
9 sponsor that. However, I don't know if it's
10 identified as an exhibit, so I don't know if we'd
11 like to mark that as an exhibit at this point for
12 ease of reference.

13 MR. WHEATLAND: We would like to sponsor
14 that exhibit and we can -- we don't have copies
15 available here today, but if it could be
16 identified as the next in order, we will make
17 copies available tomorrow.

18 HEARING OFFICER WILLIAMS: Okay. We'll
19 stick that under 4B, make it 4B-1. And, again,
20 staff, that is the --

21 MS. DeCARLO: And it's the amended and
22 restated East Altamont Energy Center farmlands
23 mitigation agreement. And I can give you a date
24 on that, September 17, 2002.

25 HEARING OFFICER WILLIAMS: Okay, and

1 we'll have copies of that put in the record
2 tomorrow, and copies available. Does anybody have
3 a copy for Mr. Sarvey?

4 MS. DeCARLO: I have a single copy if we
5 could make copies of it.

6 HEARING OFFICER WILLIAMS: Yeah, can we
7 get him a copy of it.

8 (Off-the-record remarks - laughter.)

9 SPEAKER: We're going to have to get the
10 Elks some toner.

11 (Laughter.)

12 HEARING OFFICER WILLIAMS: Mr. Sarvey,
13 so you'll have that today as soon as they make
14 copies of it.

15 Okay, staff.

16 MS. DeCARLO: Okay, staff's witnesses
17 for the topic of land use are Eileen Allen and
18 Negar Vahidi. And they need to be sworn in.
19 Whereupon,

20 EILEEN ALLEN and NEGAR VAHIDI
21 were called as witnesses herein, and after first
22 having been duly sworn, were examined and
23 testified as follows:

24 //

25 //

1 DIRECT EXAMINATION

2 BY MS. DeCARLO:

3 Q MS. Allen, can you please state your
4 name for the record?

5 MS. ALLEN: Eileen Allen.

6 MS. DeCARLO: Was a statement of your
7 qualifications attached to this testimony?

8 MS. ALLEN: Yes, it was.

9 MS. DeCARLO: And what is your job
10 title?

11 MS. ALLEN: Supervisor, Land Use and
12 Traffic and Transportation Unit within the Energy
13 Commission's Environmental Office.

14 MS. DeCARLO: Could you briefly state
15 your education and experience as it pertains to
16 land use?

17 MS. ALLEN: I have a bachelors degree in
18 rhetoric from U.C. Berkeley and masters degree in
19 environmental planning and management from UCLA.
20 I have worked at the Energy Commission
21 continuously for the last 15 years. I have a
22 variety of experiences analyzing and supervising
23 land use situations at the Energy Commission.
24 Furthermore, I've been a project manager on power
25 plant siting cases.

1 MS. DeCARLO: Did you assist in
2 preparing the testimony entitled land use
3 contained in the final staff assessment marked as
4 exhibit 1 and the errata marked as exhibit 1E?

5 MS. ALLEN: Yes, I did.

6 MS. DeCARLO: And do the opinions
7 contained in your testimony represent your best
8 professional judgment?

9 MS. ALLEN: They do.

10 MS. DeCARLO: Ms. Vahidi, can you please
11 state your name for the record?

12 MS. VAHIDI: Yes, Negar Vahidi.

13 MS. DeCARLO: Was a statement of your
14 qualifications attached to your testimony?

15 MS. VAHIDI: Yes, it was.

16 MS. DeCARLO: What is your job title?

17 MS. VAHIDI: I am a land use technical
18 specialist from Aspen Environmental Group, a staff
19 consultant to the CEC siting division.

20 MS. DeCARLO: Could you briefly state
21 your education and experience as it pertains to
22 land use?

23 MS. VAHIDI: Yes. I have a bachelors of
24 arts degree in political science; and a masters in
25 public administration from USC. I have ten years

1 of experience in land use and policy analysis
2 focused on energy and infrastructure projects.
3 And I'm a Senior Associate at Aspen, and I manage
4 many projects.

5 MS. DeCARLO: And did you assist in
6 preparing the testimony entitled land use in the
7 final staff assessment exhibit 1 and the errata
8 exhibit 1E?

9 MS. VAHIDI: Yes, I did.

10 MS. DeCARLO: Have there been any
11 changes since the issuance of the final staff
12 assessment?

13 MS. VAHIDI: Just one item. Under land
14 use table 1, which is the cumulative projects
15 list, under the Tracy Gateway project I'd like to
16 update the status of that project.

17 During the week of October 7th the City
18 of Tracy Planning Commission certified the EIR for
19 that project; approved the project; and an
20 annexation was approved at that time.

21 MS. DeCARLO: And did this change change
22 any of your conclusions contained in the final
23 staff assessment?

24 MS. VAHIDI: No, it did not.

25 MS. DeCARLO: What were your conclusions

1 regarding the project's potential to cause land
2 use impacts, and the project's conformance with
3 applicable laws, ordinances, regulations and
4 standards?

5 MS. VAHIDI: The land use staff
6 assessment focused on two main issues. One is
7 consistency with applicable laws, ordinances,
8 regulations and standards, otherwise referred to
9 as LORS. And the other, the project's
10 compatibility with existing and planned land uses.

11 And I'd like to summarize our
12 conclusions at this time. We believe that the
13 project's consistency with the County of Alameda's
14 land use designation and zoning for the site, and
15 the current development pattern for the area
16 established by the east County area plan of
17 Alameda County, as amended by measure D, is
18 unclear.

19 And although we don't completely agree
20 with the conclusions of the County of Alameda, we
21 find that its interpretation is a reasonable one.
22 And we defer to the County's interpretation of
23 their own LORS that the East Altamont Energy
24 Center is a consistent and allowed use.

25 In addition, the proposed project would

1 convert 40 acres of agricultural land to non-
2 agricultural use. And these are prime farmlands.
3 As a result, we did find that under CEQA that
4 would be a potentially significant impact.

5 It's worth noting that the County of
6 Alameda and the applicant have been involved in a
7 mitigation agreement and have reached a mitigation
8 agreement regarding the conversion and the loss of
9 this agricultural land.

10 And after reviewing the final agreement
11 we conclude that the potentially significant
12 impact would be reduced to a level of
13 insignificance under the California Environmental
14 Quality Act with the addition of implementation of
15 staff-recommended condition of certification land-
16 7.

17 And in addition to that we have
18 concluded that the project does not disrupt or
19 divide the physical arrangement of any established
20 community. And the project would not preclude or
21 unduly restrict any existing or planned land uses.

22 MS. DeCARLO: Does the project's
23 potential for visual impact in any way change your
24 conclusion regarding land use impacts?

25 MS. VAHIDI: No, it does not.

1 MS. DeCARLO: And did you analyze the
2 project's consistency with the San Joaquin County
3 general plan and the Mountain House master plan?

4 MS. VAHIDI: Yes, we did. And it's
5 worth noting that the Mountain House master plan
6 is actually is a specific plan, but they refer to
7 it as a master plan. And it's actually a general
8 plan update to the San Joaquin County general
9 plan.

10 And we concluded that after reviewing
11 those plans that the proposed project is
12 consistent with both of those items.

13 MS. DeCARLO: Thank you. Staff's
14 witnesses are available for cross-examination.

15 HEARING OFFICER WILLIAMS: Applicant.

16 MR. WHEATLAND: The applicant is in
17 concurrence with the staff's proposed conditions
18 of certification in the area of land use, and we
19 have no questions for their witnesses.

20 HEARING OFFICER WILLIAMS: Mr. Sarvey,
21 how do you want to handle this? Do you want to
22 put over your examination -- is this witness
23 available on the 21st?

24 MS. DeCARLO: Ms. Eileen Allen will be
25 available. Ms. Negar Vahidi will not.

1 MR. SARVEY: Perhaps I should cross-
2 examine her since she won't be available and she
3 did the bulk of the analysis from what I've heard
4 from staff's --

5 HEARING OFFICER WILLIAMS: Yeah, that's
6 probably a good idea.

7 MR. SARVEY: And then --

8 HEARING OFFICER WILLIAMS: And we can
9 also --

10 MR. SARVEY: We can talk to Ms. Allen on
11 the 21st or ask her some questions if something --

12 HEARING OFFICER WILLIAMS: Okay, we'll
13 try to have the transcript available, as well.

14 MR. SARVEY: Okay.

15 MS. DeCARLO: If Mr. Sarvey has
16 questions today for Ms. Allen, I'd prefer that he
17 express them today. But she will be available for
18 any additional questions he may develop for
19 Monday.

20 MR. SARVEY: All right.

21 HEARING OFFICER WILLIAMS: Go right
22 ahead, Mr. Sarvey.

23 MR. SARVEY: Okay.

24 //

25 //

1 CROSS-EXAMINATION

2 BY MR. SARVEY:

3 Q You state in your staff assessment and
4 you just stated that the staff does not completely
5 agree with the conclusions of the County
6 development department, is that true?

7 MS. VAHIDI: We believe that it's
8 unclear, the consistency conclusion that the
9 County came to.

10 MR. SARVEY: Do you consider the East
11 Altamont Energy Center an agricultural use?

12 MS. VAHIDI: No, it's an energy
13 facility.

14 MR. SARVEY: Does the East Altamont
15 Energy Center provide more infrastructure than is
16 necessary for eastern Alameda County?

17 MS. VAHIDI: Well, I can't really answer
18 that. It's an energy facility intended to provide
19 power for a large area, including the east County.

20 MR. SARVEY: Is the East Altamont Energy
21 Center financed by public funds?

22 MS. VAHIDI: I can't answer that. I do
23 not believe it is. It's a merchant power plant,
24 so it's privately owned.

25 MR. SARVEY: Okay. Does the County have

1 any beneficial financial incentives from the East
2 Altamont Energy Center?

3 MS. VAHIDI: I don't know. I'm not the
4 County, so.

5 MR. SARVEY: Okay. Does the East
6 Altamont Energy Center meet the measure D
7 objective of reducing air pollution?

8 MS. VAHIDI: Again, we concluded in our
9 staff assessment that there are inconsistencies
10 with measure D, which is a general plan. It's an
11 amendment to the east County area plan of the
12 Alameda County general plan.

13 However, again, we asked the County to
14 make conclusions about consistency of the proposed
15 project with ECAP and measure D, and we have
16 deferred to their interpretation of their own
17 local laws and policies.

18 MR. SARVEY: Does the East Altamont
19 Energy Center enhance the scenic values of east
20 County as required by measure D?

21 MS. VAHIDI: I'm not a visual resource
22 analyst, so.

23 MR. WHEATLAND: I'm going to object to
24 that question. The portion of it that says as
25 required by measure D. Mr. Sarvey hasn't laid

1 foundation for that assumption.

2 MR. SARVEY: I believe it's in the staff
3 assessment. They say it is required by measure D.

4 HEARING OFFICER WILLIAMS: We'll allow
5 it. Go ahead and ask if she knows --

6 PRESIDING MEMBER KEESE: That's what she
7 said, she doesn't.

8 HEARING OFFICER WILLIAMS: She doesn't
9 know?

10 MS. VAHIDI: I'm not a visual resource
11 analyst, I can't answer that question.

12 HEARING OFFICER WILLIAMS: Okay.

13 MR. SARVEY: Okay, thank you. Are you
14 aware that the San Joaquin County Board of
15 Supervisors opposes this project?

16 MS. VAHIDI: Yes.

17 MR. SARVEY: Are you aware that the San
18 Joaquin County Board of Supervisors controls the
19 Mountain House community services district?

20 MS. VAHIDI: Yes.

21 MR. SARVEY: Okay. Have you had a
22 chance to examine staff's errata to the final
23 staff assessment?

24 MS. VAHIDI: Land use errata or
25 otherwise?

1 MR. SARVEY: The errata.

2 MS. VAHIDI: All of the errata or the
3 land use?

4 MR. SARVEY: All of the errata.

5 MS. VAHIDI: I focused on our land use
6 errata because that was our --

7 MR. SARVEY: Okay.

8 MS. VAHIDI: Yeah.

9 MR. SARVEY: In your assessment you
10 state that the Mountain House development is
11 approximately three miles away from East Altamont
12 Energy Facility, is that true?

13 MS. VAHIDI: Which particular page are
14 you referring to?

15 MR. SARVEY: Sorry.

16 MS. VAHIDI: That's okay.

17 I have the errata. Are you referring to
18 page 5.5-19, conclusion number 3?

19 MR. SARVEY: Yes, that would be correct.

20 MS. VAHIDI: If you'll note in the
21 errata we corrected that. It's actually one mile
22 to the east of the project.

23 MR. SARVEY: And what date was the
24 errata issued?

25 MS. VAHIDI: Looks like October 10th; is

1 that correct?

2 MR. SARVEY: And when would you say you
3 completed the bulk of your analysis?

4 MS. VAHIDI: Was it -- mid September,
5 I -- yeah, --

6 MS. ALLEN: During the month of
7 September.

8 MS. VAHIDI: During September. You'll
9 note that the distance is correct throughout the
10 majority of it. That was just a typo.

11 MR. SARVEY: In conclusion number 5 you
12 state, with mitigation the operation of the
13 project would not cause any significant noise,
14 dust, public health, traffic or visual impacts to
15 nearby land uses?

16 MS. VAHIDI: That's currently in the
17 FSA, yes.

18 MR. SARVEY: And without that mitigation
19 would this particular facility be in violation of
20 land use ordinances?

21 MS. VAHIDI: Again, that's a complicated
22 question. There's very detailed LORS analysis in
23 land use, and all of those other applicable staff
24 assessment sections.

25 MR. SARVEY: Is the power plant an urban

1 use even though it's located outside an urban
2 boundary?

3 MS. VAHIDI: You could call it an urban
4 use, yes. It's an industrial facility.

5 MR. SARVEY: In light of the fact that
6 the staff has identified as significant
7 unmitigated impact in visual resources, do you
8 feel that this facility will violate ECAP policy
9 52 which states that the County shall preserve
10 open space and protection of sensitive viewsheds?

11 MS. VAHIDI: You'll note, again, on the
12 errata we've stricken visual impacts, because at
13 the time we wrote this we had that in there, and
14 it's not supposed to be in there.

15 And, again, I'm not a scenic resources
16 or visual resources specialist.

17 MR. SARVEY: But there is a law for
18 Alameda County LORS requiring that the viewshed
19 not be impacted, is that correct?

20 MS. ALLEN: As a land use panel we are
21 going to defer to the visual specialists.

22 MR. SARVEY: Okay. ECAP policy 52 which
23 states that the County shall preserve open space
24 areas for protection of sensitive viewsheds, did
25 you review that policy?

1 MS. VAHIDI: Again, just to give you a
2 little bit of background on how we conduct land
3 use analysis, since the CEC process is so
4 detailed, we focus on applicable policies to land
5 use. The visual resources staff has focused on
6 anything having to do with scenic resources or
7 visual resources.

8 MR. SARVEY: How does the East Altamont
9 Energy Center preserve the Mountain House area for
10 intensive agriculture required by ECAP policy 76?

11 MS. VAHIDI: I'm not sure I understand
12 the question, how does it.

13 MR. SARVEY: What mitigation or what
14 conditions of certification did you provide in
15 your assessment which would --

16 MS. VAHIDI: Well, it --

17 MR. SARVEY: -- force this particular --

18 MS. VAHIDI: Right, right. As I
19 mentioned before, the County and the applicant
20 have been working throughout the process and have
21 reached a final farmlands mitigation agreement for
22 preservation of agricultural lands.

23 And it's worth noting that after our
24 review and discussions that the preservation of
25 lands would be in the east County area. And in

1 addition to the mitigation agreement, we've
2 recommended condition of certification land-7.
3 And that compels -- or if it is adopted it would
4 compel the ratio for the conversion of prime
5 farmland as classified by the State Department of
6 Conservation for the construction of the power
7 generation facility.

8 MR. SARVEY: And has that prime farmland
9 been identified or set aside in the east County?

10 MS. VAHIDI: I can't speak to that.

11 MR. SARVEY: You mentioned San Joaquin
12 County's general plan. Is there any violations of
13 the San Joaquin County general plan by the East
14 Altamont Energy Center?

15 MS. VAHIDI: No.

16 MR. SARVEY: Is there any visual
17 policies of the general plan that are violated by
18 the East Altamont Energy Center?

19 MS. VAHIDI: Again, I can't testify to
20 any visual impacts; I'm not a visual resources --

21 MR. SARVEY: Is the Energy Commission
22 responsible to establish compliance with all LORS?
23 In your analysis? Pertaining to land use.

24 MS. ALLEN: Our task is to assess the
25 consistency of the project with LORS. Again, I

1 would direct you to our overall conclusions on
2 page 5.5-19. We believe that the project is
3 consistent with Alameda County LORS.

4 And we've stated an area where we had
5 some divergence from the County's conclusions.
6 However, when we review the County's reasoning
7 regarding the project as utility infrastructure,
8 we concluded that their reasoning was plausible,
9 and we would defer to the County's conclusions.

10 MR. SARVEY: Thank you very much.

11 HEARING OFFICER WILLIAMS: Does that
12 conclude your cross?

13 MR. SARVEY: That's it. Sorry, Mr.
14 Williams.

15 HEARING OFFICER WILLIAMS: That's no
16 problem. I think we have a copy now for --

17 MS. DeCARLO: Yes.

18 HEARING OFFICER WILLIAMS: -- Mr. Sarvey
19 of the exhibit which we've marked as --

20 MS. DeCARLO: Is it 4B-1, I believe?

21 HEARING OFFICER WILLIAMS: 4B-1. We'll
22 leave that for identification, subject to
23 testimony on the 21st.

24 MS. DeCARLO: Can staff do a few
25 redirect questions?

1 HEARING OFFICER WILLIAMS: Go ahead.

2 MS. DeCARLO: Thanks.

3 REDIRECT EXAMINATION

4 BY MS. DeCARLO:

5 Q Did the typographical error regarding
6 distance, identified by Mr. Sarvey, affect your
7 conclusions regarding potential for impact in land
8 use in any way?

9 MS. VAHIDI: No, it did not.

10 MS. DeCARLO: With the potential for a
11 significant visual impact are you confident in
12 your conclusion that there will be no land use
13 impacts?

14 MS. VAHIDI: Yes.

15 MS. DeCARLO: Can you please explain
16 what condition land use-7 provides?

17 MS. VAHIDI: What land-7 does is it adds
18 a little bit more language or adds a little bit
19 more detail to what's going to happen once the
20 agricultural land trust is set up. And it compels
21 them to provide monthly compliance reports and
22 provide a discussion of any the land easements
23 that have been purchased in the preceding month.
24 And to provide a guarantee that the land managed
25 by the trust will be farmed in perpetuity.

1 And the discussion of any of these
2 purchased lands includes a schedule for purchasing
3 40 acres of prime farmland and/or easements within
4 five years of the start of the construction as
5 compensation for the loss of the 40 acres of
6 farmland due to the proposed project.

7 MS. DeCARLO: So with this condition are
8 you confident that the project will mitigate for
9 40 acres of prime farmland within five years?

10 MS. VAHIDI: Yes.

11 MS. DeCARLO: That's all for staff.

12 HEARING OFFICER WILLIAMS: Mr. Sarvey,
13 do you have anything further, based upon those
14 questions?

15 MR. SARVEY: No, I just want to say
16 they've done a very good job, thank you.

17 HEARING OFFICER WILLIAMS: I didn't
18 hear, what?

19 MR. SARVEY: I just wanted to say that
20 staff's done a very good job.

21 HEARING OFFICER WILLIAMS: Okay.

22 MR. SARVEY: I appreciate it.

23 HEARING OFFICER WILLIAMS: Is the trust
24 agreement going to be made a part of the -- I
25 don't see it in staff's exhibits. I mean, excuse

1 me, applicant's exhibits now. Did I just overlook
2 it?

3 MR. DeYOUNG: It will be added, and
4 we'll bring copies tomorrow.

5 MS. DeCARLO: That's what we just
6 identified as 4B --

7 HEARING OFFICER WILLIAMS: Okay, 4B,
8 that's the document.

9 MS. DeCARLO: -- -1, yeah.

10 HEARING OFFICER WILLIAMS: Okay. All
11 righty. Commissioner Pernell.

12 COMMISSIONER PERNELL: In the exhibit
13 that we were just mentioning on the land trust, is
14 that land in the same County?

15 MS. VAHIDI: Yes, it's in Alameda County
16 and based on staff's recommendations it's going to
17 be focused in the east County area.

18 COMMISSIONER PERNELL: Thank you.

19 HEARING OFFICER WILLIAMS: Anything
20 further?

21 MS. DeCARLO: Nothing from staff.

22 HEARING OFFICER WILLIAMS: Public
23 comment?

24 MR. WHEATLAND: After you take all the
25 comment I have one procedural point.

1 HEARING OFFICER WILLIAMS: Okay.

2 FIRE CHIEF FRAGOSO: If you'll indulge
3 me for a minute, I want to get a couple things off
4 my -- to clarify a few things that happened
5 earlier and I didn't know if this would be the
6 proper time. But just --

7 COMMISSIONER PERNELL: Can we have your
8 name for the record?

9 FIRE CHIEF FRAGOSO: Okay, Larry Fragoso
10 with the Tracy Fire Department.

11 What I wanted to clarify from earlier
12 discussion of the fire protection plan, so that
13 you guys are understanding the role that we're
14 trying to clarify with you guys on the mitigation
15 with our department, is that our department here
16 has been minimally contacted on any of these
17 projects that are going on. Yet they're referred
18 in every one of the documents as part of the fire
19 protection plan under the mutual aid system
20 without any consideration whether it was okay with
21 our department in doing so.

22 We, at this time, wanted to clarify that
23 we would like that all clarifications to our
24 department or the use of reference of our
25 department as providing services not to exist in

1 any of these documents unless specifically given
2 permission by the department, or contact is
3 directly affected to our department, since we
4 haven't been able to get any of the energy plants
5 to sit down and mitigate any of the impact in our
6 department.

7 What has happened since the May hearing
8 in Livermore and the lack of cooperation from the
9 Alameda County Fire Department, we have terminated
10 all automatic aid into the area of Alameda County
11 that existed in for about the last 25 years,
12 because Alameda County had refused to enter into
13 discussion with us, or bring us into part of the
14 mitigation process.

15 At this time I would even go as far as
16 to say that the mutual aid agreement with Alameda
17 County is probably threatened.

18 What has happened in the area since
19 these hearings has begun, what used to be
20 automatic aid into the Altamont area and in the
21 areas of Midway Road where we have a lot of
22 residences, our department has been the nearest
23 resource for emergency services, being only three
24 miles away. And that, because of the lack of
25 mitigation or discussion with our department, has

1 been terminated.

2 So if anything has been accomplished
3 here in the last six months, services to those
4 people and the neighboring areas of our stations
5 that sit outside Alameda County because of its
6 proximity has suffered under the lack of
7 cooperation in these hearings.

8 Yet, looking at the latest documents for
9 Calpine we are still referenced in there as part
10 of the fire protection plan. We're also
11 referenced into the Tesla plan. And even with the
12 Peaker plant, which that is in our jurisdiction.

13 Referring to some of the questions, and
14 the questions to me were kind of limited so I
15 couldn't clarify much of what the discussion had
16 taken place with ourselves and the Peaker plant,
17 we were early on approached by an individual who I
18 assume was an independent surveyor for information
19 and impacts the department would have by GWF.

20 We told them at that time if a plant of
21 that size was coming into our area that the impact
22 would be in the formation of manpower because the
23 fire station that's nearest to their proximity is
24 a two-man fire station to provide emergency
25 service at an adequate rate, two men wasn't

1 sufficient.

2 And the dollar amount that we had given
3 them and that was over the phone was \$180,000
4 annually for an additional staff per shift.

5 When we met with the individuals from
6 the Peaker plant they made us believe that we were
7 very naive in the process of what was actually
8 going on, that this was an overwhelming request of
9 one agency. And that that request should be
10 spread out, or they should be considered -- in
11 other words, they should share in that impact with
12 any other development, industrial or any of the
13 other energy plants. We at that time agreed,
14 believing that further discussion was going to be
15 brought forward to us.

16 They allowed us to agree to them that
17 training and future equipment would be possible at
18 our request, had we agreed at that time with
19 their -- for them to go on with their application
20 process.

21 We at this time want to say that this
22 whole process, this department, was ill-informed
23 and improperly addressed on how fire protection or
24 any mitigation was handled to it.

25 At this time, because of the fact our

1 station at the Mountain House area being three and
2 a half miles from the Calpine; and the Tesla plant
3 being 3.7 miles from our existing station at
4 Schulte and Hanson, we just want to make it
5 clarified that we will not be used as reference
6 into your documentation as future emergency
7 services, but we will make it clear that we will
8 not respond to any of these emergencies in the
9 future should a need arise.

10 And the need arise -- the need isn't
11 going to arise in the area of fire protection, as
12 further earlier testimony. Plants of these types
13 will not burn as readily as vegetation in the
14 areas around it. The need is going to be in the
15 areas of EMS and in hazardous materials spills.

16 Those require a lot faster response than
17 the 15, 20 minute response time that you can
18 adequately get from Alameda. A five-minute
19 response from any one of our stations is going to
20 put us on an improper disadvantage of having to
21 refuse emergency service when the need is greatly
22 needed.

23 And I would think that the greater need
24 is going to be during the hours of operating under
25 construction when the manpower is going to reach

1 the areas of 800 to 1000 people at any one given
2 time during construction process, and when
3 accidents are greatly affected at that time.

4 And we will clarify at this time that we
5 will not be there to provide those services should
6 we not be addressed during the mitigation process.

7 Short of that, we know that our ability
8 to negotiate are limited because it is not our
9 jurisdiction. But we also want to clarify that we
10 will not be referenced in any way in a position
11 that we don't plan to oblige should we not be
12 addressed during this mitigation process.

13 HEARING OFFICER WILLIAMS: You have a
14 procedural point?

15 MR. WHEATLAND: Actually I have three
16 questions based on this most recent statement.

17 HEARING OFFICER WILLIAMS: Well, this is
18 public comment.

19 MR. SARVEY: You don't get to cross-
20 examine.

21 MR. WHEATLAND: He can choose to answer
22 them or not, but I do have three questions.

23 HEARING OFFICER WILLIAMS: No, no, we're
24 not going to allow any questions.

25 MR. WHEATLAND: So this is public

1 comment and not additional testimony?

2 HEARING OFFICER WILLIAMS: That's right.

3 MR. WHEATLAND: Thank you. I thank you.

4 HEARING OFFICER WILLIAMS: It's public
5 comment.

6 MR. WHEATLAND: I thank you.

7 HEARING OFFICER WILLIAMS: Sir, I would
8 just say, appreciate your comments, I would just
9 say for the record that, you know, I'm the Hearing
10 Officer in the Tesla project, which is coming down
11 the road. So I would encourage you to make sure
12 that your department is involved in whatever
13 discussions need to be addressed with respect to
14 Tesla, so that possibly some of the maybe
15 miscommunication or whatever can be avoided in
16 that matter.

17 FIRE CHIEF FRAGOSO: Okay. Thank you.

18 MR. WHEATLAND: I have one procedural
19 point, if I may.

20 HEARING OFFICER WILLIAMS: Yes.

21 MR. WHEATLAND: And it's very brief.
22 But I understand that typically the transcripts of
23 these proceedings take approximately ten days to
24 produce, but parties may request that they can be
25 produced a little bit more quickly.

1 And I would ask, in the interests of
2 moving this proceeding along, that upon the
3 completion of these hearings that the Commission
4 could request some expeditious processing of the
5 transcripts so that they might be made available,
6 if that's possible.

7 HEARING OFFICER WILLIAMS: Yeah, we've
8 already requested that the transcripts from today
9 and tomorrow will be expedited. And with some
10 luck we'll have those available by the end of the
11 week. So, I'll keep my fingers crossed. I've
12 been told three days, so that might happen before
13 Friday.

14 MR. WHEATLAND: Thank you.

15 HEARING OFFICER WILLIAMS: Okay, so with
16 that, again, applicant, you might have some
17 opportunity to address whatever matter that you
18 wanted to address with the public comment through
19 Mr. Sarvey's testimony tomorrow. Certainly we'll
20 leave the door wide open in that area during Mr.
21 Sarvey's presentation --

22 MR. WHEATLAND: I understand, thank you
23 very --

24 HEARING OFFICER WILLIAMS: -- for you to
25 delve into these issues if you like.

1 MR. WHEATLAND: Thank you very much.

2 HEARING OFFICER WILLIAMS: Sure. Okay,
3 so unless there's anything further I think
4 we're --

5 COMMISSIONER PERNELL: I just have a
6 comment. I guess I'm a little troubled by the
7 Chief's comments that if there's an emergency they
8 won't respond. I'm not sure that that's
9 constitutionally legal, if they are a fire
10 department and there's an emergency, they're
11 required to respond.

12 However, it appears to me that they're
13 not engaged in the process. And perhaps -- and he
14 left earlier -- perhaps he needs to, or his
15 department needs to be a little bit more engaged
16 in the process.

17 And I don't know about this case, but
18 there are certainly future cases that they need to
19 be a little bit more engaged, even as an
20 intervenor.

21 But I'm a little troubled by someone who
22 is sworn to uphold the public safety and health to
23 say that if there's an emergency we won't respond
24 because no one is talking to us. And I know that
25 that's not part of this proceeding, but it just

1 troubles me for a protector of the public to say
2 if someone's in trouble we're not going to
3 respond.

4 HEARING OFFICER WILLIAMS: Yeah,
5 Commissioner Pernell, I think there is -- it's
6 been made part of the record today, Mr. Sarvey's
7 exhibits, I believe 6A-1 and 2 also reflects the
8 official position of the Tracy Fire Department
9 under certain mutual aid agreements.

10 And I would hope that the Battalion
11 Chief's testimony today relates to its obligations
12 under those mutual aid agreements, and not a broad
13 repudiation of any duty to support an emergency.

14 So, I believe that Tracy's official
15 position has been that our record supports that it
16 will no longer be providing emergency services
17 under those agreements. And I think perhaps that
18 that's a little different than a broader
19 repudiation of any support.

20 COMMISSIONER PERNELL: I would certainly
21 hope so.

22 MR. SARVEY: May I be allowed --

23 HEARING OFFICER WILLIAMS: Mr. Sarvey.

24 MR. SARVEY: Can I make a comment on
25 that?

1 HEARING OFFICER WILLIAMS: Sure, go
2 right ahead.

3 MR. SARVEY: Well, under the existing
4 mutual aid agreement what Tracy Fire is trying to
5 say that at the present time 30 percent of all
6 their calls are to Alameda County. Alameda County
7 is not responding to the San Joaquin County
8 because it's not necessary. There's a budgetary
9 problem.

10 Trace Fire is going to respond to all
11 emergencies on the San Joaquin County side. And
12 the point I'm trying to make is that these power
13 plant sites have driven a wedge between these two
14 fire departments in these two Counties. And I'm
15 trying to point out that the CEC is impacting
16 cooperation between these two Counties and these
17 two fire departments by not providing mitigation
18 to Tracy Fire or San Joaquin County Fire
19 Department.

20 And that is a significant adverse
21 impact. And it needs to be dealt with. I'm just
22 requesting -- they're not asking for the moon.
23 They just want some equipment, you know, they want
24 some manpower. And it's justifiable. And it's
25 not happening.

1 The role of the Commissioners is to make
2 sure that things don't -- that significant adverse
3 impacts don't occur. And I'm asking the
4 Commissioners to please deal with this issue and
5 not let this go any further because, as Mr.
6 Pernell says, we are putting people's public
7 safety at risk.

8 And to site a bunch of power plants and
9 put everybody's public safety at risk, I don't see
10 the benefits of that. That's an adverse impact;
11 it's an adverse impact to the community. And we
12 need to address this. And I'm hoping that the
13 Committee does address this issue and talk to the
14 applicant.

15 I've tried to speak to the applicant and
16 tried to get them to just throw us a bone, be a
17 good neighbor, but that hasn't worked. So now
18 we're in here arguing about this. I don't want to
19 make enemies with Alameda County or anybody. I
20 just want to see the Tracy Fire Department impacts
21 mitigated. That's all I'm asking.

22 Thank you.

23 HEARING OFFICER WILLIAMS: Mr.
24 Wheatland.

25 MR. WHEATLAND: As long as we're

1 discussing this, one of the disconnects I think in
2 this whole discussion is Mr. Sarvey's comments
3 that Alameda is not reciprocating to San Joaquin
4 or to Tracy is incorrect.

5 As you've heard the Fire Chief from
6 Alameda County testify today, there are instances
7 in which they do respond to Tracy. It is a mutual
8 aid responsibility, and both have obligations that
9 they perform.

10 But even more importantly when mutual
11 aid is provided there are mechanisms under the law
12 for the reimbursement for the costs of those
13 responses. And so I don't understand how the
14 Tracy Department feels a financial impact where
15 they do engage in a mutual response, for example,
16 responding to a freeway accident, where there are
17 mechanisms under the law for Alameda County
18 already to reimburse them.

19 HEARING OFFICER WILLIAMS: Well, I think
20 this is certainly one area where the Committee
21 will be certainly looking at the briefs very
22 carefully. And to the extent that the parties can
23 give us a comprehensive brief on the subject -- a
24 comprehensive legal brief on the subject, with a
25 discussion of the evidence in the record, then

1 certainly the Committee will have all the facts
2 and the law at hand to render the appropriate
3 decision.

4 So we appreciate the comments. And, Mr.
5 Sarvey, we'll take your last remarks as public
6 comment, as well. Okay.

7 COMMISSIONER PERNELL: Let me explain my
8 point. And that is regardless of whether you're
9 Tracy or San Joaquin, if there's an emergency you
10 need to respond. And to be on record to say I'm
11 not going to respond, we're not going to respond,
12 at least that's what I heard, perhaps I was
13 mistaken on that, troubles me.

14 If there's an issue of public safety and
15 you're a fire department and they call you, you
16 have to respond.

17 And the other thing is I don't want this
18 Committee to get between some agencies' political
19 resource allocation dispute.

20 So I would hope that everybody works
21 this out. But my point is very simple, if you are
22 fire or police and you get a call, you need to
23 respond if you have the manpower and the resources
24 to do so.

25 MS. DeCARLO: If I may make two quick

1 comments. One, I just want to make it clear on
2 the record that staff did attempt to include Tracy
3 Fire Department in our discussions and in our
4 analysis. We in no way excluded them. They
5 participated, as Dr. Greenberg testified, in a
6 workshop on this very issue. So they were
7 included in our analysis.

8 Another point is in staff's testimony we
9 made the point that these power plants tend to not
10 generate very much demand for emergency services,
11 anyway. So with the little demand for services
12 and the Alameda County's determination that they
13 can provide response, staff is comfortable with
14 our determination.

15 HEARING OFFICER WILLIAMS: Okay, then we
16 will pick up tomorrow at 10:00 a.m. And with
17 that, we're concluded for today. Thank you.

18 (Whereupon, at 3:30 p.m., the hearing
19 was adjourned, to reconvene at 10:00
20 a.m., Wednesday, October 16, 2002, at
21 this same location.)

22 --o0o--

CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of October, 2002.

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